DISTRICT OF COLUMBIA SEXUAL ASSAULT LAWS

HEARING

BEFORE THE

SUBCOMMITTEE ON GOVERNMENTAL EFFICIENCY AND THE DISTRICT OF COLUMBIA

OF THE

COMMITTEE ON GOVERNMENTAL AFFAIRS UNITED STATES SENATE

NINETY-SEVENTH CONGRESS

FIRST SESSION

ON

S. Res. 207

TO REFORM THE SEXUAL ASSAULT LAWS OF THE DISTRICT OF COLUMBIA, AND FOR OTHER PURPOSES

SEPTEMBER 30, 1981

Printed for the use of the Committee on Governmental Affairs

U.S. GOVERNMENT PRINTING OFFICE
15-821 O WASHINGTON : 1983

S401-36

COMMITTEE ON GOVERNMENTAL AFFAIRS

WILLIAM V. ROTH, JR., Delaware, *Chairman*

CHARLES H. PERCY, Illinois
TED STEVENS, Alaska
CHARLES McC. MATHIAS, JR., Maryland
JOHN C. DANFORTH, Missouri
WILLIAM S. COHEN, Maine
DAVID DURENBERGER, Minnesota
MACK MATTINGLY, Georgia
WARREN B. RUDMAN, New Hampshire

THOMAS F. EAGLETON, Missouri
HENRY M. JACKSON, Washington
LAWTON CHILES, Florida
SAM NUNN, Georgia
JOHN GLENN, Ohio
JIM SASSER, Tennessee
DAVID PRYOR, Arkansas
CARL LEVIN, Michigan

JOAN M. MCENTEE, *Staff Director*
IRA S. SHAPIRO, *Minority Staff Director and Chief Counsel*

SUBCOMMITTEE ON GOVERNMENTAL EFFICIENCY AND THE DISTRICT OF COLUMBIA

CHARLES McC. MATHIAS, JR., Maryland, *Chairman*
WARREN B. RUDMAN, New Hampshire
THOMAS F. EAGLETON, Missouri

WILLIAM LEONARD, *Staff Director*
EILEEN C. MAYER, *Chief Counsel*
MARGARET CRENSHAW, *Minority Chief Counsel*
CHRISTINE SARCONE, *Chief Clerk*

CONTENTS

Page

Opening statement of Senator Mathias 1

WITNESSES

WEDNESDAY, SEPTEMBER 30, 1981

Marion S. Barry, Jr., Mayor, District of Columbia, accompanied by Judith W. Rogers, corporation counsel 5

Andrew Fowler, executive secretary, Committee of One Hundred Ministers; J. George Frain, first vice president, Federation of Citizens Associations of the District of Columbia; and Dr. Ronald S. Godwin, vice president and chief operations officer, Moral Majority, Inc 23

David A. Clarke, Chairman, Committee on the Judiciary, Council of the District of Columbia, accompanied by Jill Sayenga, codirector, Criminal Code Project, Committee on the Judiciary, and Lorilyn Simkins, codirector, Criminal Code Project, Committee on the Judiciary 56

ALPHABETICAL LIST OF WITNESSES

Barry, Mayor Marion S., Jr.:
- Testimony 5
- Prepared statement 15

Clarke, David A.:
- Testimony 56
- Introduction of a package of anticrime legislation 59
- Attachments to testimony 77

Fowler, Andrew: Testimony 23

Frain, J. George:
- Testimony 23
- Prepared statement with attachments 50

Godwin, Ronald S.:
- Testimony 23
- Republican Study Committee fact sheet 35
- Memorandum produced by the Congressional Research Service, Library of Congress 43

Rogers, Judith W.: Testimony 5

Sayenga, Jill: Testimony 56

Simkins, Lorilyn: Testimony 56

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

Statements of:
- Senator Jeremiah Denton 2
- Stephen I. Danzansky, Chairman of the District of Columbia Law Revision Council 103
- Arrington Dixon, Chairman, Council of the District of Columbia 112
- Dr. Robert L. Pruitt, Metropolitan African Methodist Episcopal Church 114

Text of Senate Resolution 207 119

American Bar Association report entitled "Child Sexual Abuse and the Law," July 1981 120

Additional statements/letters submitted:
- American Bar Association, Washington, D.C 178
- American Federation of Government Employees 179
- Arlington County, Va., Committee on the Status of Women 180

Additional statements/letters submitted—Continued

	Page
Calvary Baptist Church, Lexington Park, Md	181
Catholic War Veterans Auxiliary, District of Columbia Department	182
Common Cause/District of Columbia	183
Council 26/AFSCME, Washington, D.C	184
D.C. Federation of Civic Associations, Inc	185
Downtown Cluster of Congregations, Washington, D.C	187
Gray Panthers, Washington, D.C	188
Greater Washington Central Labor Council, AFL–CIO	189
Howell, Craig, member of the Chevy Chase Citizens Association, Washington, D.C	190
Hunter, Polikoff, Bodley & Bottum, P. C., Feminist Law Collective, Washington, D.C	191
Jewish Community Council of Greater Washington	192
League of Women Voters of the District of Columbia	193
Metropolitan Police Department, Washington, D.C	194
National Institute for Women of Color, Washington, D.C	195
National Lawyers Guild, District of Columbia Chapter	196
National Women's Political Caucus, Washington, D.C	199
Reitzer, Willel W. G., Washington, D.C	200
Self-Determination for D.C	203
Sparrow, Rev. Cleveland B., Sr., president, Sparroworld Baptist Corporation	204
United Church of Christ, Office for Church in Society	207

DISTRICT OF COLUMBIA SEXUAL ASSAULT LAWS

WEDNESDAY, SEPTEMBER 30, 1981

U.S. SENATE,
SUBCOMMITTEE ON GOVERNMENTAL EFFICIENCY
AND THE DISTRICT OF COLUMBIA,
COMMITTEE ON GOVERNMENTAL AFFAIRS,
Washington, D.C.

The subcommittee met, pursuant to notice, at 9:50 a.m., in room 3302, Dirksen Senate Office Building, Senator Charles McC. Mathias, Jr. (chairman of the subcommittee), presiding.

Present: Senator Mathias.

Staff present: William Leonard, staff director; Eileen Mayer, chief counsel; Margaret Crenshaw, minority chief counsel; Christine Sarcone, chief clerk; and John Rixey, professional staff member.

OPENING STATEMENT OF SENATOR MATHIAS

Senator MATHIAS. The committee will come to order.

The Subcommittee on Governmental Efficiency and the District of Columbia will hear testimony on Senate Resolution 207, which is a resolution introduced by the Senator from Alabama, Mr. Denton, to disapprove of the District of Columbia Act 4–69 relating to changes in the sexual assault laws of the District of Columbia.

Over the past few weeks we have been in communication with numerous organizations and individuals who have expressed their opinions on District of Columbia Act 4–69. These are groups such as the District of Columbia Federation of Civic Associations, Baptist Ministers Conference, who have expressed opposition, while Citizens for Home Rule, the National Lawyers Guild, for examples, have expressed their support for the action of the City Council.

This morning we will hear from a representative sampling of these groups, as well as from representatives of the city. We will not attempt to hear everyone who has an opinion on the subject but we do have other testimony which has been forwarded to the subcommittee and which will be included as a part of the record. In addition, other communications regarding this proposal will be available for inspection in the subcommittee files.

And so, at this time, while I am not able to invite everyone who would like to testify orally, I do suggest that those who wish to express themselves may submit their statements to the subcommittee and we will make every effort to include such statements in the record.

The opening witness this morning is the Honorable Marion Barry, the Mayor of the city of Washington, who I understand will be accompanied by the Corporation Counsel.

I have here among the documents to be included in the record a statement from the Senator from Alabama which I direct be included in the record at this time.

[The statement of Senator Denton follows:]

STATEMENT OF SENATOR JEREMIAH DENTON

The new District of Columbia sex law (D.C. Act 4-69) was adopted by the Washington, D.C., City Council on July 14, 1981, and approved by Mayor Marion Barry in July 1981. The Council almost passed an even more radical version of the law, but was forced to modify it after a loud public outcry. However, most of the objectionable features remained intact in the final version passed by the Council and approved by the Mayor.

The new law would establish four new categories of nonconsensual sex—"sexual assault" and "sexual contact," each in the first and second degrees. The maximum penalty for forcible rape would be reduced from life imprisonment to 20 years in jail.

D.C. Act 4-69 would remove all references to the sex of the victim and thereby extend legal protection to male victims of homosexual rape. On the other hand, by legalizing sodomy the new law would create a climate in which such attacks are more likely to occur. Male victims could easily be protected by the old law with a relatively slight modification of wording, without discarding whole sections of the old law altogether, as D.C. Act 4-69 would do.

The new law would decriminalize consensual sex acts, both homosexual and heterosexual, by those 16 years of age or over.

D.C. Act 4-69 specifically and explicitly repeals present criminal statutes against:
Seduction by a teacher of a female aged 16 to 21;
Sodomy;
Bestiality;
Adultery; and,
Fornication.

The D.C. Act also amends the indecent exposure law so as to make prosecution much more difficult.

These repeals and amendments, together with the wholesale decriminalization of consensual sex by those 16 years of age and above, would result in the following:

The sodomy law under which a former Congressman was recently arrested will no longer exist;

A teacher could legally make sexual advances and have intercourse with a 16-year-old girl, so long as the student consented. (Act 4-69 does prohibit sexual acts with an inmate or a patient, but not with a student. It specifically repeals the old law that protected students aged 16-21 from seduction by a teacher.);

A male teacher could sodomize a consenting 16-year-old male student;

There will be no law against sex with animals;

Social legitimacy would be increased for homosexual acts; and,

A sado-masochistic sexual behavior between consenting adults and children over 16 would become much more difficult to prosecute than at present.

The elimination of the present statute against seduction of students is particularly alarming in light of what Time magazine calls "a disturbing idea [that is] gaining currency within the sex establishment: very young children should be allowed, and perhaps encouraged, to conduct a full sex life without interference from parents and the law." Mary Calderone, who heads the influential sex education organization SIECUS, says the child has a fundamental right "to know about sexuality and to be sexual." (Time, September 7, 1981.) If sex educators have these values, it is reasonable to expect their classes to make children more vulnerable to sexual exploitation, and to seduction by teachers; and if such seduction is permitted under the law with 16-year-old students, it is almost certain to have a ripple effect on younger students, also. Furthermore, the present criminal law upholds certain standards of sexual behavior; now, sex educators in Washington must at least refer to them when discussing norms in sex education classes.

It is commonly recognized that any law has an important teaching function. The current law teaches that certain sexual norms are binding and worthy of legal sanction. The new law would teach the opposite.

The outrages of D.C. Act 4–69 are no accident. The framers' attitude is illustrated by their attempts to repeal the old incest law and the child sex laws. The author of D.C. Act 4–69, Councilman David Clarke, said "teenaged sexual activity that is consensual is not an area for criminal law." Accordingly, his original version would have allowed consensual sex and intercourse between children aged 12 and over (if the partners were not more than four years apart in age), and even between children under 12 (provided the children were not more than two years apart in age). The recklessness of the D.C. Council is measured by the fact that the Judiciary Committee reported that version unanimously, and six of the thirteen Council members went on record supporting that original version, according to The Washington Post. The Post applauded that original version editorially, as "Good work that the city can be proud of."

When these provisions on child sex were publicized, Washingtonians loudly protested. In response, the City Council struck from the new bill those sections that would have specifically permitted sexual activity between children of comparable ages, and the Council also removed the repeal of incest. Aside from a few deletions, the Council let objectionable features remain in Act 4–69 when they passed it.

The Washingtonian magazine featured a cover story last September with the question: "Is D.C. Becoming the Gay Capital of America?" The magazine's cover featured a photograph of a laughing Mayor Barry with his arms draped over the shoulders of two gay activists at Gay Pride Day. "Gays were Mayor Barry's key voting block," the Washingtonian said, "and now the homosexual population of Washington is growing in numbers, visibility and clout."

If, in fact, Washington is becoming "the gay capital of America," D.C. Act 4–69 would greatly accelerate the process. Without question, D.C. Act 4–69 would give increased legal and social approval to homosexual acts, and the law would provide a tremendous demonstration of gay political clout. If Congress votes to uphold D.C. Act 4–69, it will go on record as consenting to these consequences.

The supporters of D.C. Act 4–69 have argued that sodomy could still be prosecuted under the indecent exposure statute in the D.C. code. This a half truth at best.

In fact, the author of the legislation, David Clarke, has repeatedly stated that the new law would legalize consensual sexual behavior, including homosexual behavior. This is why gay activists have supported the law. D.C. Act 4–69 specifically repeals the sodomy statute, and does not include sodomy in its amendment of the existing indecent exposure statute. Even under the existing indecent exposure statute (prior to amendment by 4–69) it is unclear that consensual sodomy is included. (*Rittenour* v. *District of Columbia* stated that 22–1112, the indecent exposure law, "is not designed or intended to apply to an act committed in privacy or presence of a single, consenting person . . . homosexuality is not a crime.")

The use of the indecent exposure law against sodomy is fatally weakened by D.C. Act 4–69's amendment to the indecent exposure law. D.C. Act 4–69 adds a new requirement for conviction of indecent exposure, namely a higher level of intent: the behavior must now be made "with reckless disregard that someone perceiving the proposal will be seriously offended." This requirement certainly would not be met in the case of private, consensual sodomy, and probably would not be met even in cases where the act occurs in locked stalls in public restrooms. Therefore, the indecent exposure law as amended by D.C. Act 4–69 is weakened to the point of powerlessness so far as prosecution for private, consensual sodomy is concerned.

Proponents of D.C. Act 4–69 have tried to cloud the substantive issues in the law by invoking home rule. This incantation of slogans about home rule obscures the real federal interest in Washington's criminal statutes, and the Constitutional obligation on Congress to exercise legislative authority over the nation's capital.

Washington is the Nation's Capital, and it belongs to all Americans as does no other city.

Washington is the nation's showplace, and what happens here sends a signal to the world of the standards we advocate as a nation.

Washington contains the largest concentration of federal employees. The government has an interest in the criminal statutes controlling their behavior.

Washington's decriminalization of deviant behavior will have a spillover effect on Virginia, Maryland and other states.

Washington is visited by millions of American and foreign tourists, whose safety would be affected by a change in the city's criminal statutes.

The Constitution recognizes and requires extraordinary Congressional responsibility for the District when it grants to Congress the "power . . . to exercise exclusive legislation in all cases whatsoever, over such District . . . as may . . . become the seat of the Government of the United States. . . ." (Article 1, Section 8).

When Congress granted limited self-government to Washington, it specifically reserved to itself ultimate legislative jurisdiction over the capital. The D.C. Self-Government and Governmental Reorganization Act of 1973 contains a "reservation of Congressional Authority" provisions. Section 601 states:

"Notwithstanding any other provision of this Act, the Congress of the United States reserves the right, at any time, to exercise its constitutional authority as legislature for the District, by enacting legislation for the District on any subject, whether within or without the scope of legislative power granted to the Council by this Act, including legislation to amend or repeal any law in force in the District prior to or after enactment of this act and any act passed by the Council."

The proponents of a mythical unrestricted "home rule" do not seem to realize the reality of routine Congressional oversight of the District. The power of Congress is not limited to direct vetoes (as its act in 1979 disapproving Washington's Location of Chanceries Act). Congress can and does routinely exercise line-item control over programs in D.C. through the budget process. Every year, Congress reviews and appropriates for the D.C. budget. It is Congress, not the City Council, that makes final decisions on the District's appropriations. Congressional authority is not merely over the federal portion of the city budget. Some examples of this control follow:

Last week, the House blocked a D.C. plan to hire new police officers and firemen by lottery.

Last week, the House blocked a D.C. plan for a city-wide gambling lottery.

Last week, the House blocked a D.C. plan for hauling sludge to Pennsylvania.

Since 1935, Congress has forbidden the city from spending money even to study the merits of installing meters in taxicabs.

Since 1980, Congress has required the city to hire additional police officers.

For years, Congress has placed a limit of $225,000 on the District's out-of-city travel and per diem expenditures.

But beyond Congress' Constitutional obligation, Washington residents have appealed to Congress to disapprove D.C. Act 4-69.

Reverend Carey Pointer, President of the Baptist Ministers' Conference of D.C. and vicinity:

"If you take these (crimes) off the books, you send out a signal that it's all right to commit adultery, it's all right to commit fornication, it's all right to engage in homosexual activity.

"The D.C. Act can and should be vetoed."

Reverend Cleveland Sparrow, President of Sparroworld Baptist Corporation:

"Congress must learn that the D.C. City Council did not hold hearings to obtain our views on this matter.

"The Act is not a home rule issue . . . but a national 'home ruin issue' and a nationwide disaster. Only the gay lobbies knew what was in D.C. Act 4-69 when hearings were held last March."

The Federation of Citizens Associations of the District of Columbia:

"The Federation of Citizens Associations of the District of Columbia hereby petitions the Congress to disapprove D.C. Act 4-69 . . . This act legalizes every sexual act, whether a sodomy, a sadism, or any other perversion purportedly committed with the 'consent' of any party 16 years or more of age . . .

"We feel a double obligation in petitioning Congress in this matter. First, we appeal as citizens and residents of this city who will be denied a quality of social and moral life equal to that which citizens of other jurisdictions enjoy. But, equally, we feel an obligation to write to you on behalf of all the citizens of the United States, asking you as their representatives to protect the good name and reputation of our nation's capital for all Americans."

Congress has a Constitutional and statutory obligation to exercise its legislative jurisdiction over the capital, especially in the case of flagrantly irresponsible acts by the City Council. To accede to the proponents of D.C. Act 4-69 that "home rule" precludes Congressional oversight would be to abandon a clear Constitutional duty.

In conclusion, D.C. Act 4-69 is a bad bill. The Congress has the right and responsibility to veto bad D.C. legislation. Home rule by the D.C. government is a privilege granted by the Congress, which has ultimate Constitutional responsibility for the Federal City. Home rule is not an absolute right.

Legislation such as 4-69 blatantly flies in the face of the standards and values of most Americans. Failure by the Congress to intercede in this matter will send a message to every Congressional district and around the world that the Congress approves of both a variety of deviant sexual acts, and a major reduction of penalties for acts which have long been considered criminal by the vast majority of Americans.

Mr. Chairman, S. Res. 207, if passed, will overturn D.C. Act 4-69. I hope that the Committee will find in its wisdom to act favorably on this Resolution.

Senator MATHIAS. Good morning, Mayor Barry.

TESTIMONY OF MARION S. BARRY, JR., MAYOR, DISTRICT OF COLUMBIA, ACCOMPANIED BY JUDITH W. ROGERS, CORPORATION COUNSEL

Mr. BARRY. Mr. Chairman, I appreciate the opportunity to appear before you to discuss D.C. Act 4-69, Sexual Assault Reform Act of 1981.

I also would like to indicate that I am accompanied by the Corporation Counsel for the District of Columbia, Judy W. Rogers.

Mr. Chairman, I would like to have my statement in its entirety entered into the record.

Senator MATHIAS. Mayor, your statement will be included in full in the record as if read and you can summarize it in such manner as you would like.

Mr. BARRY. Mr. Chairman, I would also like to thank you for your strong support for the self-government thrusts of the citizens of the District of Columbia. We certainly have been sensitive to concern about the rights of the citizens of the District of Columbia to govern ourselves. So on behalf of all of us, I certainly want to publicly and personally thank you for your support in the past, your present support, and your future support.

Also, Mr. Chairman, I would like to thank you for scheduling these hearings which give everyone an opportunity to—at least for the record—express themselves.

I think there are three criteria that this subcommittee ought to use, the Congress—both the House and Senate—ought to use, as it looks at legislation passed by the local government.

As you and I have discussed on numerous occasions, philosophically and programmatically, I don't believe that the Congress of the United States ought to even be involved with reviewing acts passed by the City Council, signed by the Mayor. Nor should the Congress of the United States be involved with the budgetary process of the city government.

Unfortunately, we have not yet arrived at that full measure of freedom and so we are here today because the law allows this process to take place in this manner.

There are three criteria, Mr. Chairman, that I think the subcommittee of the Congress ought to look at.

First, has the city exceeded the powers granted to it under the Home Rule Act? The answer to this question, as I will point out later in my statement, is an unequivocal, no. The District clearly has not exceeded the powers granted to it under the Home Rule Act.

The second criteria ought to be, has this clearly violated a constitutional principle? Traditionally, legislators are not the ones who make the final determination of constitutional principles. It is the courts. Of course, legislators would like to get an opinion from their lawyers, their joint counsel or their corporation counsel, as to whether a particular act appears to be constitutionally sound.

However, if there is a debate, and there is a question raised by citizens or any other group as to the constitutionality of a measure passed by the City Council or the Congress of the United States, the courts are the logical place to make a determination.

However, we certainly asked that question of the Corporation Counsel before the City Council acted. After they had acted, after two readings, I asked my Corporation Counsel the same question and the answer was, there does not appear to be any constitutional principle involved.

The third criteria, which certainly ought to be of proper interest to this panel, that is, has there been a substantial Federal interest affected? I use the word "substantial" for greater emphasis because I think that is the criteria that we have to use.

Has there been a substantial Federal interest affected? As I will point out later, Mr. Chairman, the Congress of the United States gave the District responsibility for revision of its criminal laws. The Senate Subcommittee on Governmental Efficiency, this very same subcommittee, the District of Columbia, and the House District Subcommittee on the Judiciary carefuly considered whether they wanted to enact a revised criminal code for the District or whether to give that to the local citizens.

And therefore the recommendations of the Law Revision Commission were put forth in 1978. The Senate and the House decided to refer the matter for local determination.

It seems to me, Mr. Chairman, that if the Senate and the House had any reservations about giving the District these powers, it would have held them for themselves, that right to make those revisions themselves.

And so it is clear to me that based on any and all analysis, any and all discussion, there is no substantial Federal interest involved here.

There are those who would argue that this is the Nation's Capital and therefore anything that we do here, bears a substantial Federal interest. I reject that argument because the 700,000 of us who live here, certainly pay more than our fair share of income taxes—$1.4 billion last year we paid, we received back from the Federal Government about $700 million, $300 million Federal payment, over $300 million Federal funds.

And so I don't see any substantial Federal interest involved with this act. There may be some disagreements as to what is in the act, as to whether it is good, bad, or indifferent, but this is not the forum to debate those disagreements. The forum to debate those disagreements would have been in the hearings that were conducted by the City Council. The City Council Committee on the Judiciary held hearings in every ward of our city, had hearings in the City Council chambers, had two readings in conformity with the law, sent the bill for me to sign. I signed it even though in every piece of legislation you may have reservations about one or two parts of it, but the overall bill is a strong bill, and therefore I signed it.

Also, this bill was developed in consultation with the U.S. Attorney for the District of Columbia, as well as members of the Law Revision Commission who were appointed by members of Congress.

Mr. Chairman, let me point out that the 15-member Law Revision Commission, the city only has 5 members. The Congress appoints the other 10 which means that if there were Congresspeople who wanted to give their views, let their views be known, I think that was the proper place to do it and not at this forum.

Let us look briefly, Mr. Chairman, as to the question of whether the Council of the District of Columbia had the authority to enact D.C. Act 4-69. There is no doubt about the Council's authority to enact the Sexual Assault Reform Act of 1981, approved July 21. Indeed, legislative history reveals that the District followed Congressional expectation in approving D.C. Act 4-69.

As you know, Mr. Chairman, when the self-government, Governmental Reorganization Act of 1973 was adopted, there was a prohibition for 24 months on the Council changing title 22 or 24 of the D.C. Code. That prohibition was extended for an additional 24 months.

At the end of that time, it was clear that the conference committee agreed to transfer authority to the Council to make changes. So it is clear that the Council's authority has not been exceeded. It is intact. Those who would ask you to vote for or disapprove the resolution have not raised any questions about the Council's authority. So the answer to that one is very clearly, no.

Those who would ask you to vote against the Council's right and the city's right to make its own laws, have not raised any question about the constitutionality question because I think it is clear that there are some 40 States, 40 States which have reformed their sexual assault laws, and the bill which the Council passed contains many of those reforms as voted upon by the several States of the United States.

And so, Mr. Chairman, when you look at all of this, it seems to me that we have to conclude that the substantial Federal interest is not threatened, there is no constitutional question here, there is no authority question here. Of course, there may be some moral questions that people raise. I understand those questions and I certainly appreciate them doing it. The place to raise those questions, by local citizens as well as citizens who live in Virginia and elsewhere who would ask that you act on this, would have been before the City Council, at the various hearings.

In fact, Mr. Chairman, last week at the House District Committee hearings on this very same subject, Congressman Fauntroy indicated that he has made his personal views known to members of the City Council and to the Mayor and that in some instances those views were not adopted. It was his view that once the Council has acted properly and legally, that's what we ought to abide by.

I am convinced that the great majority of our citizens who live in the District of Columbia believe in this legislative process where the Council acts, the Mayor signs or the Mayor vetoes a bill, and that to tamper with that process on this particular issue would be going against the freedoms that we have fought so hard for.

Mr. Chairman, you remember the struggles we had in the 1960's and the 1970's. You certainly were very supportive of us to get our right to determine our lives legislatively and executively.

And so to now ask the Congress to step in, even though the Congress has a right to do so legally, to overturn a legal and lawful act

of the City Council, would be going against self-government, it would be taking us back to the days when those of us who wanted to be free and wanted to make decisions for ourselves will not have that.

And so I urge the subcommittee and the committee and the Congress, if given an opportunity to vote, to disapprove of this resolution. We don't need it. There has been evidence and as you listen to testimony I'm sure that no one can say that the Council acted illegally, unconstitutionally, or that there is a substantial Federal interest involved here.

Thank you, very much.

Senator MATHIAS. Thank you, Mayor Barry. As you have said very candidly, of course, the resolution before us would be within the legal power of the Congress to adopt. So its consideration becomes a question of judgment based on the factors that you reviewed in your testimony—questions of home rule principles, questions of judgment of the Congress as to what should be the prevailing law.

Now, you have said that 40 States have passed amendments to their sexual assault laws that are comparable to the act of the City Council; is that correct?

Mr. BARRY. That is correct, Mr. Chairman.

May I also add that obviously each State adopts its laws depending on the prevailing mood of its constituency. And there are some States that have gone further than the City Council has, to tender reforms and revisions. And there are some that have not gone quite as far.

But those 40 States have looked at the subject. Let me also add that the bill enacted by the council is substantially the same bill which was recommended by the Law Revision Commission to the Council. The Law Revision Commission recommended a number of changes in the criminal codes and in the civil and administrative processes for the District, beyond sexual assault law reform. This happens to be only one of many that they recommended.

Senator MATHIAS. Those who have expressed concern about the City Council's action have emphasized the safety and welfare of young persons. Of course this is a concern of all of us. What is the age of consent in the Council's bill?

Mr. BARRY. Mr. Chairman, the age of consent legally in the city is 18 in terms of the general age of consent. For purposes of this particular legislation, 16.

Ms. ROGERS. Mr. Chairman, that is no change in the law. All the recommendations which the Law Revision Commission made to the District of Columbia Government, they had recommended repeal of title 22, section 3501, Indecent Acts With Children. In enacting this statute, the Judiciary Committee, in reporting out a bill, did not adopt that recommendation, so that law remains on the books as it is now.

Senator MATHIAS. At 16?

Ms. ROGERS. That is correct.

Senator MATHIAS. This is an area in which the Judiciary Committee of the Senate has legislated within the past several years in connection with child pornography. It is an area in which we have taken a very severe view. But you did not lower the age of consent?

Ms. ROGERS. That is correct, Mr. Chairman.

Mr. BARRY. Mr. Chairman, as you recall earlier in the original draft of the Judiciary Committee's bill, that is the D.C. Council, a move to lower it. A number of us spoke out against that and did some work with the Council members and persuaded them to move back to 16. And, again, I think that's a process that everybody should have followed with everything here, try to lobby, try to talk to people.

Senator MATHIAS. Perhaps I should address this question to counsel. Is there a generally accepted figure among the States in State law as to the age of consent?

Ms. ROGERS. Mr. Chairman, we'll be happy to supply some information for the record on that.[1] It is my understanding that, of the States that have addressed revisions in this area of sexual assault, approximately 25 are comparable to the legislation before this subcommittee and there the age of consent is 16.

Now, it varies in some regards as to the penalty and the burden of proof on the prosecution in these cases, but we do have an outline that we will be happy to supply for the record.

Senator MATHIAS. I have in front of me a comparative table which deals with a select group of States and in some it is apparently as low as 12 years. In others it is as low as 14 years, which I would think was truly exposing children to grave dangers.

Without wanting to drag this out, I think the easiest thing for me to do is to put this table, which includes Alabama, North Carolina, Utah, South Carolina, and Nebraska, in the record. Then if we have further figures, further information on these States or on other States, I can supplement the record at a later time. But I will put this table into the record at this time since that will become one of the areas for decision by the Senate.

[The table follows:]

[1] See p. 120.

Offense	Model Penal Code recommendations [1]	Proposed for District of Columbia (D.C. Act 4–69)	Alabama	North Carolina	Utah	South Carolina	Nebraska
First degree rape and/or sexual assault.	Removes criminal provisions among consenting adults; recommends criminal sanctions for forcible acts, persons under age, and those incapacitated.	Compelling a person to participate in or submit to a sexual act by (1) actual physical force; (2) threat; (3) substantial impairment of the victim's mental state through drugs, etc. (20 years).	Male sexual intercourse with female by forcible compulsion; with the [2] physically or mentally incapacitated; a male16 with a female less than 12 (class A felony).	Person engages in vaginal intercourse with another by force and against will; with child 12 or younger if perpetrator is 12 or more and 4 years older than victim (life imprisonment).	Actor has sexual intercourse with another person, not spouse, and without victim's consent (2nd degree felony; 1st degree felony if victim is under 14).	Any sexual action if actor uses aggravated force or victim object of forcible confinement, kidnapping, robbery, etc.(30 years).	Use of force or threat of force to subject person to sexual penetration; subjecting mentally or physically incapacitated to sexual penetration; actor is 19 or older and victim is less than 16 (class 2 felony).
Second degree rape and/or sexual assault.	.....	Engaging in sexual activity without consent due to physical or mental incapacity, drugged, etc. (10 years).	Male sexual intercourse with female if male is 16 or older, more than 2 years older than female, and female is between 12 and 16 or mentally defective; only a misdemeanor if male does not know female is mentally defective or under 16 (class C felony).	Person engages in vaginal intercourse with another by force and against will, or with person who is mentally defective or physically helpless and perpertrator knows that (40 years).	Aggravated sexual assault.—Causes serious bodily injury or threatens kidnapping or death in course of rape or sodomy (1st degree felony).	Actor threatens coercion, force, or violence of aggravated nature against victim or 3d person (20 years). Criminal sexual conduct in 3d degree.—Sexual actions if actor uses force or coercion in absence of aggravating circumstances or actor has reason to know that victim is mentally defective, incapacitated, or physically helpless (10 years).	2d and 3d degree: Use of force or threat of force to subject person to sexual contact; subjecting mentally or physically incapacitated to sexual contact (class 3 felony if personal injury results; class I misdemeanor if no personal injury).
First degree sodomy and/or sexual offense.	.....	Covered in gender neutral sexual assault (above)—allows consensual acts among consenting adults.	Sexual intercourse with another person by forcible compulsion; with the physically or mentally incapacited, or a person 16 with a person less than 12 (class A felony).	Person engages in sexual act with another by force and against will; with child 12 or younger if perpetrator is 12 or more and 4 years older than victim (life).	Forcible sodomy.—Sodomy without consent (2d degree felony; 1st degree felony if victim is under 14).	Buggery.—Sodomy with mankind or beast; even consensual—(5 years and/or $500).	Covered in netural gender sexual assault (above).

Second degree sodomy and/or sexual offense.	Covered in gender neutral sexual assault (above).	Sexual intercourse with another if one is 16 or older and other is between 12 and 16, or victim is mentally defective; only a misdemeanor if age or mental state unknown (class C felony).	Person engages in sexual act with another by force and against will, or with person who is mentally defective or physically helpless and perpetrator knows that (40 years).	Actor engages in any sexual act regardless of sex (class B misdemeanor).	.....	Do.
Statutory rape	No sexual activity with child under 16 (20 years).	Age of consent in previous classifications.	Age of consent in previous classifications.	Sexual intercourse with person under 16 if not spouse (3d degree felony unless actor no more than 3 years older; then class B misdemeanor).	(1) Actor engages in sexual battery with victim less than 11 years and actor is at least 3 years older than victim (1st degree); (2) actor engages in sexual battery with a victim who is 14 or less but who is at least 11 and the actor is at least 3 years older than the victim (2d degree); (3) actor engages in sexual battery with a victim who is more than 14 but less than 16 and the actor is in a position of familial, custodial care, etc. (2d degree).	Age of consent included in first degree sexual assault.

Offense	Model Penal Code recommendations [1]	Proposed for District of Columbia (D.C. Act 4–69)	Alabama	North Carolina	Utah	South Carolina	Nebraska
Indecent exposure and proposals.	Person exposing self to arouse sex desire causes affront or alarm (misdemeanor).	No exposure of person if offensive to person perceiving ($300 or 90 days) or no exposure in presence of child less than 16 ($1,000 or 1 year).	In public place, person exposes self with intent to gratify himself or another other than spouse (class A misdemeanor).	Willfully exposes private parts in public place ($500 and/or 6 mos.).	Exposes parts to cause alarm or affront in public place (class B misdemeanor).	Willful, malicious exposure in public place (court's discretion).	Person 18 or over performs in public place an act of sexual penetration, exposure of genitals, lewd fondling of another (class 2 misdemeanor).
Adultery	Decriminalizes	Decriminalizes	No apparent criminal provisions.	Misdemeanor	Misdemeanor	Misdemeanor	Misdemeanor.
Fornication	do	do	do	do	do	do	No apparent criminal provision.

[1] Prepared by American Law institute, 1962; with variations, all States listed here have adopted the Model Penal Code.
[2] Defined as physical force that places a person in fear of immediate death or serious physical injury.

Senator MATHIAS. Mayor, if you have nothing further?

Mr. BARRY. Mr. Chairman, let me just indicate that, again, we certainly ought to air the various aspects of the bill and examine whether or not there is substantial Federal interest involved.

Also Mr. Chairman, we certainly ought to make sure the facts are put on the table and not fiction. I've been disturbed that some people who——

Senator MATHIAS. Mayor, you know that is very difficult to attain in any walk of life, to make sure that facts and not fiction are put on the table.

Mr. BARRY. Mr. Chairman, there are some things that are facts. For instance, there has been some fiction that the incest laws of the District of Columbia have been changed where people can do anything they want to do with immunity and the fact is, it has not changed. The present bill makes it even more difficult.

For instance, if I am a guardian of a person, under the present law, I can commit sexual acts and not be charged with incest, whereas, under the new bill, the fact is that if I am a guardian and I engage in sexual activity with the person I am guardian to, I can be charged with incest.

There are some other facts that I think we ought to put out there as time goes on. That is the only thing I was saying.

Senator MATHIAS. What you are suggesting is that the City Council bill provides some safeguards for young people that have not existed in the prior law?

Mr. BARRY. Mr. Chairman, absolutely. Also, for instance, presently, if you are committed to a mental institution and a counselor wants to sexually abuse a male or female, they can do that basically with impunity. Or if you are imprisoned, a prison guard or another inmate wants to sexually abuse someone, it is not prosecutable. But under the new bill, people who need some mental help, and who are wards of the State or are in a mental institution, now are protected from those kinds of acts. People who are in prisons are protected so that this bill, if you look at the facts of it, goes beyond what we have now and offers protections to people who are not now protected. It protects men in ways that they have not been protected before.

And I think, as I said earlier, the basic issue here is not necessarily whether one agrees with everything in the bill. The basic issue here is, has the City Council done something to substantially affect the Federal interest, not one's personal interest, but the Federal interest. That's the kind of thing I think we ought to look at.

Ms. ROGERS. I only ask Mr. Chairman if we could have permission to submit some documents for the record, in terms of the comparative analysis?

Senator MATHIAS. Yes. We would appreciate any additional documentation on a comparative analysis. And I think it would be helpful to have some information as to the number of States with a lower age of consent and those with a higher age of consent. I think that kind of a breakdown would be helpful in presenting it to the other Members of the Senate who don't have the advantage of being here today.

Mr. BARRY. Mr. Chairman, let me also add, I would hope that our friends in the Senate and the Congress will consider a notion

that I have always felt very strongly about and I think we ought to be consistent in what we try to do. I know it is hard. But for those who would oppose what the Council has done in terms of the substance of it, certainly if their own States have laws that are either as progressive or if the age of consent is lower—which some of the States do—I think they also ought to be back to their State legislatures or their city councils or county councils and stand there and argue, and urge their county counsels and State legislators, to change their laws, too. I think that is consistency.

I know it is hard for some people to do, but I've tried.

Senator MATHIAS. Thank you, very much, Mayor. We appreciate your being here.

[Mayor Barry's prepared statement follows:]

TESTIMONY OF THE HONORABLE MARION S. BARRY, JR.

MAYOR OF THE DISTRICT OF COLUMBIA

ACCOMPANIED BY JUDITH W. ROGERS, CORPORATION COUNSEL, D. C.

BEFORE THE SENATE SUBCOMMITTEE ON GOVERNMENTAL EFFICIENCY AND THE DISTRICT OF COLUMBIA

ON D. C. ACT 4-69, SEXUAL ASSAULT REFORM ACT OF 1981

September 30, 1981

Mr. Chairman,

I appreciate the opportunity to appear before you to discuss D. C. Act 4-69, Sexual Assault Reform Act of 1981. Traditionally, in considering District of Columbia Acts, the District has focused on three major questions:

First, has the City exceeded the powers granted to it under the Home Rule Act? The answer to this question, as I will point out later in my statement, is that the District clearly has not exceeded the powers granted to it under the Home Rule Act.

Second, does it appear that the City has clearly violated a constitutional principle? There does not appear to be any constitutional principle which the District has violated in enacting D. C. Act 4-69.

Third, is the federal interest substantially affected? As I will point out later, the Congress of the United States gave the Dis-

trict responsibility for revision of its criminal laws. The Senate Subcommittee on Governmental Efficiency and the District of Columbia and the House District Subcommittee on the Judiciary carefully considered whether they wanted to enact a revised criminal code for the District when they reviewed the recommendations of the Law Revision Commission in 1978. They decided to refer the matter for local determination. Given the laws and the law revision efforts in the several states with respect to sex laws, the District's proposal is not unique. In fact, it is similar to the laws of many states. As a practical matter, I do not see the Sexual Assault Reform Act of 1981 as having an adverse impact on our law enforcement activities and would point out that the bill was developed in consultation with the United States Attorney for the District of Columbia as well as the members of the Law Revision Commission who were appointed by members of Congress.

Let me turn now to the question of whether the Council of the District of Columbia had the authority to enact D.C. Act 4-69. There is no doubt about the Council's authority to enact the Sexual Assault Reform Act of 1981, approved July 21, 1981. Indeed, legislative history reveals that the District followed Congressional expectations in approving D.C. Act 4-69.

When the Self-Government and Governmental Reorganization Act of 1973 was adopted by the Congress on December 24, 1973,[1] it contained section 602(a)(9) which prohibited the Council from enacting:

---

[1]P.L. 93-198, 87 Stat. 774.

> any act, resolution, or rule with respect to any provision of title 23 of the District of Columbia Code (relating to criminal procedure), or with respect to any provision codified in title 22 or 24 of the District of Columbia Code (relating to crimes and treatment of prisoners), during the twenty-four full calendar months immediately following the day on which the members of the Council first elected pursuant to this Act take office.

Subsequently, Congress changed the "twenty-four" months to "forty-eight" months and added a prohibition, during that time, on enacting any act, resolution, or rule "with respect to any criminal offense pertaining to articles subject to regulation under chapter 32 of title 22 of the District of Columbia Code."[1]

Legislative history of the original version of section 602(a)(9) leaves no doubt that Congress intended to maintain complete control over the District's criminal laws for only a very limited period of time, and that during that time the Congress would seek to revise the District's criminal code. The Committee of the Conference wrote:

> The Conference Committee agreed to transfer authority to the Council to make changes in titles 22, 23, and 24 of the District of Columbia Code, effective January 2, 1977.. After

---

[1]P.L. 94-402, 90 Stat. 1220, September 7, 1976.

> that date, changes in titles 22, 23 and 24 by the Council shall be subject to a Congressional veto by either House of Congress within 30 legislative days. The expedited procedure provided in section 604 shall apply to changes in titles 22, 23, and 24. It is the intention of the conferees that their respective legislative committees will seek to revise the District of Columbia Criminal Code prior to the effective date of the transfer authority referred to.[1]

And the then Chairman of the House Committee on the District of Columbia, in reporting on the conference report stated:

> Congress retains authority over the District of Columbia criminal laws until January 2, 1977. During this period I shall actively support the revision of the D.C. Criminal Code. After this time such authority shall be vested in the D.C. Council and any Council changes shall be subject to veto by either House for 30 legislative days.[2]

After the 1976 change in section 602(a)(9) of the Self-Government Act, the Corporation Counsel, District of Columbia issued an opinion which stated:

---

[1] Joint Explanation of the Committee of Conference, Home Rule for the District of Columbia 1973-1974, Background and Legislative History, Chapter V, December 31, 1974, pages 3013-3014.

[2] Id., page 3054.

> As of January 3, 1979 the Council had the authority to enact acts with respect to titles 22, 23, or 24 of the D.C. Code.[1]

Thus, since 1979 the Council clearly has had the authority to enact criminal laws for the District.

It is important to note that instead of revising the District's criminal code itself as it originally intended to do, the Congress established the District of Columbia Law Revision Commission in 1974,[2] and among other duties, assigned it the task of giving "special consideration to the examination of the common law and statutes relating to the criminal law in the District of Columbia, and all relevant judicial decisions, for the purpose of discovering defects and anachronisms in the law relating to the criminal law in the District of Columbia and recommending needed reforms."[3] On March 7, 1978 Stephen I. Danzansky, Chairman of the District of Columbia Law Revision Commission transmitted to the Congress "a new basic criminal code for the Nation's Capital."[4] Included in that code was Chapter 6, "Sexual Assault Offenses."

Both the House and the Senate held extensive hearings on the

---

[1]See 2 Op.C.C.D.C. 043 (1977).
[2]P.L. 93-379, 88 Stat. 480, August 21, 1974.
[3]Section 3 of the District of Columbia Law Revision Commission Act, D.C. Code §49-402(a) (Supp. V, 1978).
[4]New Basic Criminal Code for the District of Columbia, House of Representatives, Ninety-fifth Congress, Second Session, March 7, 1978, Serial No. S-6.

new Basic Criminal Code for the District of Columbia.[1] Several months after these hearings concluded the Chairman of the Senate Subcommittee on Governmental Efficiency and the Chairman of the House District Subcommittee on the Judiciary sent a joint letter to the Chairman of the Committee on the Judiciary, Council of the District of Columbia. The letter which transmitted the joint recommendations of the Senate and House committees, stated in part:

> In the spirit of home rule, we are delighted to begin the process of transferring jurisdiction of the proposed criminal code to the City Council so that they can complete the task of codification by adding the essential ingredient of their knowledge of the District of Columbia.[2]

---

[1]See D.C. Criminal Code Revisions, Hearings Before the Subcommittee on the Judiciary, Committee on the District of Columbia, House of Representatives, February 9, November 16, 17, 29, December 14,17, 1977, 95th Cong., 1st sess., Serial 95-1; April 25, 27 and May 2, 9, 1978, 95th Cong., 2d sess., Serial No. 95-17. Revised Basic Criminal Code for the District of Columbia, Hearings Before the Subcommittee on Governmental Efficiency and the District of Columbia of the Committee on Governmental Affairs, United States Senate, 95th Cong., 2d sess., May 3, 4, 19 and June 20, 1978.

[2]See December 5, 1978 letter in New Basic Criminal Code for the District of Columbia, Joint Recommendations of the House District Subcommittee on Judiciary and the Senate Subcommittee on Governmental Efficiency and the District of Columbia, 95th Cong., 2d sess., Serial No. S-9, December 5, 1978, pages v-vi.

Thus, the Congress considered final revision of the District's criminal code to be a matter most appropriately addressed by the District Government.

Accordingly, in response to the transmittal from Congress, the Committee on the Judiciary of the Council commenced a series of eight public hearings, in each ward of the District of Columbia, on January 10, 1980 for the purpose of examining the D.C. Law Revision Commission's proposed code. These hearings, which were held both during the day and in the evening, extended to April 1980, and resulted in careful examination of the proposed code, including Chapter 6 which served as the model for D.C. Act 4-69. In fact, D.C. Act 4-69 contains many of the provisions set forth in Chapter 6 of the Law Revision Commission's New Basic Criminal Code, and follows that Code's general approach by focusing on three basic kinds of conduct: sexual assaults, unlawful sexual acts, and unlawful sexual contacts.[1] It should be noted, also, that in March 1981 two days of public hearings were sponsored by the Council on several criminal bills, including the sexual assault bill.

It is obvious then, Mr. Chairman, that the Council not only had

---

[1]See New Basic Code for the District of Columbia, op. cit., pages 22-24, and pages 127-143.

the authority to enact D.C. Act 4-69, but in enacting D.C. Act 4-69 the Council followed the expectations of Congress by incorporating into the Act many of the recommendations of the District of Columbia Law Revision Commission. Furthermore, it also seems obvious to me that by transmitting its report on the Law Revision Commission's proposed code to the Council of the District of Columbia, the Congress viewed the District's criminal code as a matter most appropriately handled by the District government (just as criminal codes and laws are enacted and amended by municipalities and states throughout the union) rather than by the Federal government.

Senator MATHIAS. I will next call a panel to the witness table: Dr. Ronald Godwin of Lynchburg, Va., representing the Moral Majority, Inc.; George Frain of Washington, representing the D.C. Federation of Citizens Associations; and the Reverend Andrew Fowler of Washington, representing the members of the clergy who are opposed to the action of the Council.

If you will please come to the witness table?

Gentlemen, do you have any preference as to the order in which you speak?

Mr. GODWIN. As I understood it, Mr. Chairman——

Senator MATHIAS. As you speak, please give your name first so that your comments can be properly attributed to you.

Mr. GODWIN. I am Dr. Ronald S. Godwin, vice president and chief operations officer of Moral Majority, Inc., from Lynchburg, Va.

Mr. FRAIN. I am George Frain. I am first vice president of the Federation of Citizens Associations of the District of Columbia.

Senator MATHIAS. And well known to this committee.

Mr. FRAIN. Thank you.

Senator MATHIAS. Reverend Fowler is also well known to this committee.

Mr. FOWLER. I am Andrew Fowler, pastor of the Capital View Baptist Church, executive secretary of the Committee of One Hundred Ministers.

Senator MATHIAS. Mr. Godwin, you were beginning your remarks?

Mr. GODWIN. I was just going to comment that my understanding was that Reverend Fowler was going to speak first. That was simply my understanding.

Senator MATHIAS. Fine. Reverend Fowler, you have the floor.

TESTIMONY OF ANDREW FOWLER, EXECUTIVE SECRETARY, COMMITTEE OF ONE HUNDRED MINISTERS; J. GEORGE FRAIN, FIRST VICE PRESIDENT, FEDERATION OF CITIZENS ASSOCIATIONS OF THE DISTRICT OF COLUMBIA; AND DR. RONALD S. GODWIN, VICE PRESIDENT AND CHIEF OPERATIONS OFFICER, MORAL MAJORITY, INC.

Mr. FOWLER. Mr. Chairman, and members of the committee.

My name is Andrew Fowler, as I have just said. I have come to represent the Committee of One Hundred Ministers and the Baptist Ministers' Conference of the District of Columbia and vicinity, with a combined constituency of more than 100,000 people.

I wish to express deep appreciation for the privilege of appearing before your committee. The Committee of One Hundred Ministers has given serious attention to D.C. Act 4-69 and to Senate Resolution 207. The dangerous ramifications of D.C. Act 4-69 are manifold.

To begin with, as is universally stated, D.C. Act 4-69 repeals criminal statutes against seduction by a teacher of a female aged 16 to 21, sodomy, bestiality, adultery, and fornication.

In the meantime, if D.C. Act 4-69 becomes law, it would create a climate for the growth of crime. It would increase the frequency of thefts, robberies, murders, unemployment, indebtedness, broken

homes, divorces, drunkenness, sodomy, pregnancies, incest, fornication, and adultery.

The major danger in D.C. Act 4–69 lies in the encouragement that it gives the unprincipled and shrewd to perpetrate evil upon an unprotected and uninformed multitude of citizens, particularly the young, the illiterate, the aged, the handicapped, and the helpless.

It is the conviction of our constituency that the evils that would result from the acception of D.C. Act 4–69 would be so numerous and so grave that the Congress should use the extremist measures to prevent it becoming law, to protect little children and their supporters from perpetual fear, indebtedness, penury, want and degradation, temptation and sin.

Some measure must be taken to prevent the shrewd and unscrupulous from considering the Government a legal aid and abettor in the perpetuation of these awful evils upon society.

This act would overturn the consignments of poverty, disrupt the orderly arrangement of the family, teach hatred of proper behavior, pervert the educational process, lead to further rebellion against the wholesome restraint of morality, develop distaste for good character, encourage contempt for God's authority, lead to disrespect for the godly poor, diminish greatly the domestic tranquility which is guaranteed by our Constitution, foster selfish likes and desires instead of obedience to the laws of God.

An act that would so alter the way of life in the District of Columbia as D.C. Act 4–69 should have had the scrutiny of the citizenry before the City Council and the Mayor adopted it. They failed to call us. Instead, the Council did not notify the public that it was about to make changes contrary to the Mosaic Code and the fundamental American way of life. The Council was concerned only with what was legal. The Council should have given more attention to expediency. Not everything that is legal is expedient. When the City Council and the Mayor embraced D.C. Act 4–69, they might have adopted what was legal, but they certainly did not adopt what was expedient for the city.

The city government should not leave the children with D.C. Act 4–69 to deal with. They cannot read the law. They will be confused by what seems to be a double standard. D.C. Act 4–69 represents a low aim for society. The poet has well said, "not failure but low aim is the crime."

D.C. Act 4–69 is a crime producer. There will be no use in holding hearings on the prevention of crime if D.C. Act 4–69 becomes law in the Nation's Capital. If D.C. Act 4–69 becomes law, there will be no use to talk about home rule for there will be nothing over which to rule.

The most important ingredient that a city, county, State, or nation has is the character of its citizens. The crimes which are recommended by D.C. Act 4–69 must be made loathsome. God reserved His severest punishment for Sodom and Gomorrah to show His condemnation for sodomy.

D.C. Act 4–69 throws too much fascination on libertinism and free loveism. When a nation foresakes God, God forsakes that nation, as set forth in Judges 2:6–16. In view of this fact, D.C. officials and other governmental officials ought to set a good example

for the citizenry. I hope the members of your subcommittee will remember that with the Israelites, "The people served the Lord all the days of Joshua, and all the days of the elders that outlived Joshua, who had seen all the great works of the Lord that He did for Israel." Like leader, like people.

Elected officials must be careful on which side of great moral questions their influence is thrown. Citizens who love our Nation should oppose D.C. Act 4-69. You can give this act a death blow.

In view of the evils inherent in D.C. Act 4-69, the Committee of One Hundred Ministers strongly urges that: One, you support Senate Resolution 207 to disapprove D.C. Act 4-69; two, that a law be enacted so this kind of act can never be brought up again. Someone will throw up the bugaboo of home rule, but the Congress is obligated to see to it that the laws which are passed are the best for the citizenry. The Constitution of the United States grants Congress power to exercise exclusive legislation in all cases whatsoever over such District as may become the seat of the Government of the United States. Article I, section 8.

In view of the fact that the District of Columbia Self-Government and Governmental Reorganization Act of 1973 contains a reservation of congressional authority provision, section 601 states:

> Notwithstanding any other provision of the act, the Congress of the United States reserves the right, at any time, to exercise its constitutional authority as legislature for the District, by enacting legislation for the District on any subject, whether within or without the scope of legislative power granted to the Council by this act, including legislation to amend or repeal any law in force in the District prior to or after enactment of this act and any act passed by the Council.

The U.S. Congress is the only earthly hope that we have to save the progress and accomplishments that our city has achieved since its establishment. In a sense, if you save the District of Columbia from degradation, you save the Nation. The District of Columbia has an image that should be preserved. As the head of the government of the land, the District of Columbia should set the standard for the Nation. The citizens of all the States look to Washington, D.C., for direction. If the source is corrupt, what can we expect of the stream?

The United States was not built on sodomy, incest, fornication, adultery, bestiality, and hatred for the Bible and God. You will remember that when the Founding Fathers faltered in building the United States, Benjamin Franklin pointed out that men could not build the tower of Babel without God's help and he urged that the founders could not build this Nation without recognizing God.

From that moment, the growth of the Nation was assured. Let Benjamin Franklin's words remind us that citizens at large, as well as governmental officials, must have religious sensibility, or our city and our Nation may be swept from the moorings which have made our Nation great. We need to maintain these moorings, to have a kingdom that cannot be moved. None can deny that this country of ours was democratically founded and grounded in Judeo-Christian principles which emphasized virtues which promoted dignity, justice, righteousness, and honor.

The Bible, on which this Nation was established, is a supreme standard by which all human conduct, creeds, and opinions must be judged. The Bible condemns homosexuality as illegal at Leviti-

cus 18:22; Jude 1:4; Genesis 18:20, 19:24; Romans 1:26, 27, 28. It condemns fornication and adultery at 1st Corinthians 6:9, Hebrews 13:4.

We wish to state here that we do not pretend to know all of the legal entanglements involved in D.C. Act 4-69. Nonetheless, we are absolutely sure that something can and ought to be done to prevent this evil act from becoming law.

We are cast adrift on a wide open sea. We need a star to guide us. Lights are going out in the District of Columbia one by one. It is an infallible law that when one light goes out, it makes another light brighter. We are obligated to turn our lights up. In this dark hour, we need a light that is glowing. Our prayer is that the Congress of the United States might be that bright light.

We need to keep in mind also that each of the sexual behavior patterns counted legal in D.C. Act 4-69 has its detrimental effects for individuals, society, and the local and national government.

Bestiality leads to sickness, bodily weakness and other evils.

Fornication spreads venereal diseases and leads to utter sensuality. People who are habitual fornicators often end up on the welfare rolls.

Adultery has tentacles like an octupus. It reaches out to hurt all members of two families, those on the side of the male and those on the side of the female in the heterosexual practice. It affects the children, the grandparents, and other family members. It leads to the breakdown of the family. When the family breaks down, the children must be fed. They often end up wards of the State.

Sodomy or homosexuality uses the parts of the body contrary to the purposes for which God designed them. This perversion leads to all kinds of mannerisms and aberrations. It leads to internal and external strife.

Homosexuality is a vice, which if practiced, becomes more and more compulsive and addictive. The practice of sodomy leads to depression, jealousy, loneliness, and other evil tendencies. Those who practice sodomy are often easy prey for alcoholic and drug abuse.

The practice of sodomy often leads to hostility toward other people. Those who practice sodomy are frequently causing unnecessary economic problems.

While the liabilities listed above as inherent in D.C. Act 4-69 are not exhaustive, they are particulars which show that D.C. Act 4-69 would have deadly effect on the District of Columbia if it becomes law. If adopted, it would increase the welfare rolls, expenses for health, the police department and other expenses.

We, the Committee of One Hundred Ministers, a combine of 14 denominations, in cooperation with the Baptist Ministers' Conference and other citizens, urge you to heed the voice of the majority of the citizens and support Senate Resolution 207 and disapprove D.C. Act 4-69.

In the meantime, Mr. Chairman, we would like to remind you and the other members of the subcommittee that while there have been indications that the hearings were held for the citizens, it was apparently done in a corner because according to the Council people with whom I talked, the people who came to their hearing were people who favored what they were doing.

Our hope is that in the future the Council will let the citizens know when they are going to take up vital issues such as this.

And inasmuch as the Congress has been able to block other elements, less important, meters, taxicabs, it is certain that it ought to be able to protect the great interest of the citizens of Washington in a measure so important as the one proposed by D.C. Act 4-69 before us this morning.

And, another thing which you can keep in mind is that we have already discovered that the Constitution, the Self-Government Act, the compelling Federal interest, and the compelling Federal interest is involved here at several spots and the reality of the fact that the Congress has overview of the laws of the District of Columbia—all make it exceedingly important that we. our Congress, turn this issue back.

Somebody has claimed that this law makes certain crimes or adds to the penalty, but this law weakens almost everything that we already have. We already had laws against incest. There might have been an age variation. We, the citizens of Washington, wouldn't have known about this bill yet if the Washington Post had not reported it. Immediately we came into action, asked the Congress to give us a hearing, rather asked the Council to give us a hearing, but the Council would not hear the citizens. We turned in some papers from which we never heard a word.

Our hope is that our Congress will save the citizenry, the great majority of the people in this town, who are opposed to this bill. They are fearful for their children, fearful for themselves, and they recognize that if it is passed, our taxes are going up. We are always getting a promise that taxes are going to be lessened but every year they go up and this will increase that.

We therefore hope, Mr. Chairman, that you will keep in mind and inform the members of your committee that all of these items that have been pointed out as priorities have been infringed upon by this bill.

Thank you. [Applause.]

Senator MATHIAS. There will be no demonstrations. If there are any demonstrations, we will have the room cleared.

Reverend Fowler, we appreciate your testimony very much. I'll reserve questions until all the other members of the panel have testified.

Mr. Frain.

Mr. FRAIN. I am J. George Frain. I am first vice president of the Federation of Citizens Associations of the District of Columbia. I have three copies of my testimony which I submit to you for the three members of the subcommittee.

We appreciate the privilege of testifying and ask you to include our statement in the record.

Senator MATHIAS. It will be included in full.

Mr. FRAIN. We want to go on record as strongly supporting Senate Resolution 207 as well as its House counterpart, House Resolution 208.

We and all other District citizens were not permitted to testify in the House hearing, which is most regrettable and unconstitutional.

All D.C. citizens were denied due process, a Constitutional requirement, by the D.C. City Council and the Mayor, because they

provided no section-by-section analysis of D.C. Act 4-69 and its predecessor bill, No. 4-122, nor were citizens of the District of Columbia provided an explanation of the intent of this legislation by these publicly elected officials which would show that there would be a complete repeal of the sodomy, fornication, adultery, and seduction statutes which would make sodomy and lesbianism as free as it was in ancient Greece and Rome.

We would urge the Senate and this subcommittee to take note of the fact that this is the only explanation provided by Hon. David A. Clarke in introducing D.C. bill 4-122 on February 10 as to the bill's intent. I have a copy of his statement with me at this time and it says only this:

> I am also introducing the District of Columbia Sexual Reform Act of 1981 to modernize our laws in this area. It will create two grades of sexual assault. The first will include what is now charged as rape, or forceable sodomy, plus sexual acts forced by placing one in fear of kidnap or by drugging the victim without her or his knowledge. It will divide what is now known as statutory rape into two degrees, sex with an older child, that is consensual sex between a child between 12 and 16 and a defendant at least 4 years older, and sex with a younger child, that is consensual sex between a child under 12 and a defendant at least 13 years old. It will provide penalties for unlawful sexual acts with wards, inmates, or patients where the nature of the relationship is abused and it will provide penalties for unlawful sexual contact using a similar grading. The doctrine of spousal immunity, whereby a spouse cannot charge the other with rape, will be abolished for first degree sexual assault.

Now, that is all that he said about the legislation. Now, as Reverend Fowler has said, the citizens did not know what was in this thing and I will submit at this point, for the committee's consideration, a copy of David Clark's statement which shows he had not wanted to be frank and open with the people such as our federation members, Reverend Fowler and other distinguished leaders here today, Rev. Carey Pointer, chairman of the 500-member Baptist Ministers' Conference, Rev. Cleveland B. Sparrow, head of the D.C. chapter of the Moral Majority, and Arthur Meigs, president of the D.C. Federation of Civic Associations, comprising 56 local civic and citizens associations.

He did not explain what is the major concern of the opposition witnesses. It is clear, therefore——

Senator MATHIAS. At the same time, Mr. Frain, I don't think you want to be like the preacher who scolds the people who are in church for the people who aren't. You are here testifying and so we are giving you that opportunity. I think if we can keep your testimony to the objections you have to the resolution we are considering, that would be most helpful.

Mr. FRAIN. My objection, our objection is that we, the citizens, were not properly advised. When a Member of Congress introduces a bill, or a Senate resolution or whatever, a House bill or a House resolution an explanation and a section-by-section analysis in clear easily understood language is provided. I was up here as a legislative aide for 20 years, Senator Mathias. I worked for Republicans and Democrats and I know that when you introduce a bill, you state the intent—and provide a section-by-section analysis.

Senator MATHIAS. That is a point well taken and I think the committee understands that.

Mr. FRAIN. Yes, sir.

It is clear the City Council deliberately withheld information as to the legislative intent to abolish the present criminal penalties as to consensual sex between adults, make seduction of a child by a teacher of a boy or girl 16 years of age legal, and to make legal the sodomy conduct of Congressman Hinson in a men's room in the House Office Building, or any other sodomist in any public place including the city streets.

Furthermore, there wasn't a word about legalizing sodomy, seduction of minors by teachers, adultery, and fornication in the testimony of the D.C. Corporation Counsel Judith Rogers, for the executive branch agencies and Mayor Barry. And this was also true of the testimony of Police Chief Burtell Jefferson and U.S. attorney for the District of Columbia, Charles Ruff. This omission, we feel, was deliberate and they all failed to alert District citizens, heads of families and church leaders. But the gay community knew what was in this new legislation. They supported it.

Now, I will submit, for the committee's consideration, a copy of Judith Rogers' testimony on March 12 before the City Council. There is not one word—you can read it very carefully—there is not one word about decriminalizing sodomy, fornication, adultery, seduction, et cetera.

The D.C. government clearly was not given authority by the Congress and the Home Rule Act to make another Sodom out of the Nation's Capital. Congress did not delegate to the D.C. government in the Home Rule Act the authority to destroy homes and family life by legalizing sodomy, fornication, adultery, and seduction and approving these lifestyles for America.

A year ago, the Washingtonian Magazine, September 1980, asked, "Is D.C. becoming the gay capital of America?" And it showed the inroads which gays had achieved in controlling the political decisions of the Mayor and City Council. I submit a copy of this article which names names and gives an indepth look at the real situation in the District of Columbia.

The Washington Post on August 27 this year, reported that Mayor Barry had appointed a homosexual activist with apparently no other qualification to the Alcoholic Beverage Control Board. There are, said the Post, 32 gay-oriented restaurants in D.C., and the appointment, according to the Post, was celebrated in private in Mayor Barry's office from which the public and the news media were excluded.

The Catholic Archbishop of Washington, James A. Hickey, wrote in the Catholic Standard of July 16:

> The new legislation removes civil prohibitions with regard to adultery, fornication and sodomy. By so doing, the law withdraws significant support for fundamental values of our Jewish and Christian moral tradition. The fabric of society is weakened when basic values of family life and human sexuality are no longer protected by law. Adultery, fornication, and sodomy are immoral. The withdrawal of civil prohibitions and penalties does not make them morally permissible. They are wrong because of the very nature of human love, sexuality and the family.

Now, we are told that the D.C. chapter of the Knights of Columbus recently adopted a resolution strongly endorsing and backing the views of Archbishop James A. Hickey.

The Washington Star on July 15 reported that Rev. Carey Pointer, who is here today, and is president of the Baptist Ministers'

Conference of the District of Columbia, consisting of some 500 Baptist ministers, had denounced the legislation to legalize sodomy, fornication, and adultery.

On August 17, the Federation of Citizens Associations of the District of Columbia petitioned the Congress to disapprove D.C. Act 4-69 and strongly denounced the legalizing of sodomy, fornication, adultery, and seduction.

On September 12, the D.C. Federation of Civic Associations, consisting of 56 local civic and citizens associations in the District of Columbia, petitioned the Congress to disapprove D.C. Act 4-69 and said, "We regard the steamroller legislative procedure employed as a travesty of the local legislative process intended by our Home Rule Act."

On August 13, the Federation of Citizens Associations of the District of Columbia, wrote to the Reverend Jerry Falwell requesting help from the Moral Majority, which up to that time, had not taken a position on the nationwide home and family ruination aspects of D.C. Act 4-69.

On August 19, 6 days later, the Moral Majority and Reverend Falwell replied, "We are moving to mobilize Moral Majority and are working hard to find sponsors in both the House and Senate to stop this act."

On August 24, the Moral Majority report carried a major article, titled "D.C. Sex Laws Outrageous, Congress Urged To Veto Liberal Package."

This article pointed out that if passed into law by Congress D.C. Act 4-69 would, among other things, one, repeal the statute under which Representative Hinson was arrested and charged with sodomy in the House Office Building; two, it would effectively remove all sanctions against consensual homosexual conduct between adults in the District of Columbia; three, it would repeal statutes prohibiting adultery and fornication; four, it would repeal the D.C. law prohibiting sexual seduction of a child by a teacher; and, five, it would legalize a sexual advance by a teacher against a 17-year-old child so long as no force was used.

Now the history of the act is this. There was no report on intent or section-by-section analysis of D.C. Act 4-69 or of the prior legislative bill 4-122, which was the predecessor bill, when the Judiciary Committee of the D.C. City Council held hearings in March of 1981, so citizens did not know it proposed to legalize sodomy, fornication, adultery, and seduction, and there would have been a storm of protest.

Reverend Fowler has pointed out he didn't know what was in the bill until mid-July. The Catholic Archbishop, James Hickey, wrote an article in the Catholic Standard on July 16, which I have included as part of my statement. Rev. Carey Pointer was opposed to the legisation and was so quoted in the Star on July 15. So it wasn't until 3 months later, April, May, June, July—4 months later—after the hearings on March 12 and 13—that the citizens of this city began to learn what was really in this legislation.

We think that that is not the kind of home rule that the Mayor claims he is carrying on here. As I have indicated earlier, Corporation Counsel Judith Rogers, Chief Burtell Jefferson, Mayor Barry, and the U.S. attorney for the District of Columbia, Charles Ruff,

deliberately failed to point out that sodomy, et cetera, would be legalized by D.C. Act 4-69 and its predecessor bill 4-122 at the March 12 and 13, 1981 hearings. The point is, D.C. Act 4-122 was the bill heard on March 12 and 13. It was the predecessor bill to D.C. Act 4-69. And when the Mayor signed it into law, on July 21, and had it hand-delivered that very same day to the Congress, there was nothing in there—there was no indication of its real purpose. If you look at bill 4-122 and D.C. Act 4-69, you will find that there is only technical jargon at the end of the bill in section 13, I believe it is on pages 13 and 14, which say this-and-this-and-this statute provisions of the D.C. criminal law are repealed. They do not identify them. They do not list the titles of those sections that are being deleted. There was an obvious attempt on the part of the City Council, the Mayor, the then police Chief Jefferson, Judith Rogers, the Corporation Counsel, to conceal the intent of this heinous legislation. She is not supposed just to represent the Mayor, she is supposed to represent all of the citizens of the District of Columbia, and that is the provision that Congress adopted and she did not do that.

Nor did Police Chief Burtell Jefferson—who is supposed to be somewhat antihomosexual—report on the real intent of this legislation. He did not say in his statement anywhere—and I have submitted it here for the committee's information—one word about the sodomy provisions of D.C. Act 4-69.

The real intent of D.C. Act 4-69 and bill 4-122 was known only to the homosexual community, David Clarke, and these officials, Rogers, Jefferson, Barry, and Ruff, but this intent was carefully withheld from the community. They failed in their primary duty and responsibility to protect the entire community, its homes and families, and were concerned only with advancing homosexuality and sodomy in the Nation's Capital.

In conclusion, we strongly urge two steps. One, congressional adoption of Senate Resolution 207 and House Resolution 208, and a congressional recommendation that Mayor Barry and the City Council move, with the help of the religious citizens of this city, to put the sodomy provisions of D.C. Act 4-69 on a referendum citywide at the earliest date possible. We are not afraid of the vote of the citizens of this city on sodomy.

Reverend Sparrow had an article in the Washington Post the other day which said that he figured about 5,000 people might vote for the sodomy provisions of D.C. Act 4-69 out of the 200,000 registered voters. In any event, we have no fear of the action of Reverend Fowler's group, the Baptist Ministers, the Protestant, Jewish, and Catholic citizens of this city, and we suggest and urge that the Congress adopt Senate Resolution 207, that the Senate adopt it, and send this D.C. Act 4-69 back and direct Mayor Barry to put the sodomy provisions on a referendum at the earliest date possible by whatever legal means that can be done. And let's have the referendum and debate. The citizens didn't know, as Reverend Fowler said, on March 15, what was in the bill, and we didn't know in the citizens and civic federations.

I testified personally on March 12 and 13 before the City Council and I did not know, because I am not an attorney, what was in the legal jargon in the final section, and certainly the Mayor and

Judith Rogers and Burtell Jefferson and Charles Ruff did not tell us what was in it.

Thank you.

Senator MATHIAS. Thank you, Mr. Frain.

Dr. Godwin?

Mr. GODWIN. Mr. Chairman, I am pleased to be here as well this morning because I believe this is precisely where I should properly be testifying because I am not a citizen of Washington, D.C., but I am an American citizen and I look upon Washington, D.C., as my National Capital.

I am here to testify in the place of Rev. Jerry Falwell, president of Moral Majority, Inc., against the enactment of D.C. Act 4-69.

As Mr. Frain has said, this legislation, if allowed to become effective, would repeal the statute under which Congressman Hinson was arrested in the Longworth Building. It would effectively remove all sanctions against homosexual conduct in the District of Columbia. It would repeal statutes prohibiting adultery and fornication. It would repeal the D.C. law prohibiting sexual seduction of a child by a teacher. It would legalize a sexual advance by a teacher against a 16-year-old student, so long as no force was used.

It would repeal the penalty for forcible rape from life imprisonment to only 20 years in jail.

In other words, D.C. Act 4-69 is what I term a perverted act about perverted acts and it should be prevented from passing into law.

I disagree with Mayor Barry. Washington, D.C., is not just any local jurisdiction. It is this Nation's Capital. It is my Capital. This was recognized by the Congress when they created the D.C. Home Rule Act which includes a provision whereby Congress, acting for the Nation as a whole, may by resolution of disapproval prevent a D.C. act from taking effect.

I contend strongly that the American people, through their elected officials, do have a stake in what the laws of their Capital City are, and they certainly do not want to legitimize or give their seal of approval to perverted acts.

If D.C. Act 4-69 becomes law, it will be used as a reason or excuse for other local or national laws and regulations of a similar character. This would give entirely the wrong signal as to what is right and proper to the whole Nation.

The vote on passage of the resolution of disapproval of this act probably will be one of the only times Congress has the opportunity to go on record for or against reduced jail sentences for crimes or outright repeal of criminal laws. The primary question that each Member of Congress will have to face is very simply this: Are you, as a Member of Congress, in favor of repealing laws favoring sexual seduction of a student by a teacher? Are you, as a Member of Congress, for repealing laws against sodomy and beastiality? Do you, as a Member of Congress, want to campaign in 1982 on the basis that you voted in favor of reducing the maximum jail sentence for rape from life imprisonment to only 20 years? Further, I respectfully point out that the people of this country in the last month have come to realize that if Congress does nothing about this D.C. Act 4-69 it is, in effect, voting for repeal of laws and for reducing the sentence for the vicious crime of rape, because D.C.

Act 4-69 goes into effect automatically if Congress acquiesces to Mayor Barry and does nothing.

We've heard a lot about home rule with respect to D.C. Act 4-69. The concept of home rule does not have preeminence in this case because Congress does have a constitutionally mandated right and responsibility with respect to legislation in the District of Columbia.

Mr. Chairman, I have a display here to my right which I would like to call the subcommittee's attention to. It reads that, the Congress shall have power to exercise exclusive legislation in all cases whatsoever over such district as may become the seat of government of the United States.

Senator MATHIAS. Dr. Godwin, let me interrupt you to say, that has never been in question here. In fact, this subcommittee wouldn't exist if there was any question about that. Mayor Barry was perfectly candid in acknowledging that to be the case.

Mr. GODWIN. Well, I understood Mayor Barry to say that he really didn't feel that Congress had any business——

Senator MATHIAS. He said Congress has the legal power to adopt this resolution. I think you have to give the Mayor credit for that. And that is the case and that is why this subcommittee exists.

Mr. GODWIN. I agree and that's why I said in the beginning that I am pleased to be here because I feel it is proper that I speak at this particular forum, my point being that since the Constitution does give Congress the right and responsibility to exercise exclusive legislation in all cases whatsoever over the seat of our National Government, I and every citizen of the United States does have a right to hold our elected representatives accountable for the actions they take or do not take in carrying out their constitutional duties with respect to D.C. Act 4-69.

The repeal of sodomy, beastiality, adultery, and fornication laws in our Nation's capital is certainly not the majority view of Americans and I do not believe it is the majority view of the residents of the District of Columbia.

Therefore, Congress should not abdicate its constitutional responsibility in connection with the District of Columbia.

Archbishop Hickey has said, in effect, that sodomy, adultery, and beastiality are immoral whether or not this law is passed. It will give entirely the wrong signal if Congress, by an action, by acquiescence, or by defeat of the resolution of disapproval, allows the repeal of these criminal statutes.

Our Nation and Washington, D.C., want more and tougher laws against crime. D.C. Act 4-69 gives our National Capital fewer and weaker laws against crime. A vote in favor of House Resolution 208 will keep the stronger, anticrime laws in effect in our Nation's Capital. And I do urge the committee to exercise its constitutional responsibility and vote to report House Resolution 208 favorably.

I also respectfully remind the members of the committee and all Members of the House and Senate that D.C. Act 4-69 goes into effect automatically. Make no mistake. A vote against the motion to discharge the committee from further consideration, should it be necessary, or a motion to postpone or table the resolution is a vote for sodomy, beastiality, fornication, adultery, and seduction of a student by a teacher.

In addition, I believe that the constituencies of this Congress will view any vote against tough anticrime laws as being soft on crime because by delay or disapproval of Senate Resolution 207 or House Resolution 208, you will be automatically allowing the reduction of the maximum penalty for the vicious crime of rape from life imprisonment to only 20 years. This will be perceived as soft on crime. There are few if any crimes more brutal than rape.

I understand that two members of this committee were distinguished attorneys general, the chief law enforcement officers in their States. As attorneys general they certainly are familiar with what is known as plea bargaining. It is unfortunately an all-too-common practice.

A horrible example of what I am talking about occurred in the District of Columbia just last September. A young woman employed by a radio station was murdered by a man who was on parole from a 3- to 15-year sentence for assault with intent to commit rape. The murderer had served less than 4½ years of his 3- to 15-year sentence when he was let out of jail. Just imagine what might occur if the maximum penalty for rape is reduced to only 20 years.

If you reduce the starting point for plea bargaining from life to 20 years, you are going to have vicious, convicted rapists getting out of jail sooner and much more frequently.

I ask this question. Do you wish to subject your staff, who work in the District, and who may live here, as well as your visiting constituents, to the possibility of meeting someone who would have otherwise still been in jail except that a plea bargaining arrangement got them out of jail sooner because the starting point for the bargain was reduced?

And what about the hundreds of thousands of people from Maryland and my State of Virginia, who spend large amounts of their lives in Washington, D.C.? I don't think this committee wants to subject them to the results of a weaker penalty for rape.

I am confident that most Americans want tougher, not weaker, anticrime statutes and I am sure the residents of the District do as well. Therefore, I do urge you to reject D.C. Act 4-69 by favorably reporting Senate Resolution 207 and by adopting that measure in the Senate and by passage of its companion bill, House Resolution 208, in the House of Representatives.

I have several items that I would like to submit for the committee's consideration.

Senator MATHIAS. Would you care to specify those items?

Mr. GODWIN. Yes, sir. One is a fact sheet produced by the Republican Study Committee and the second is a memorandum produced by the Congressional Research Service for the Library of Congress. Both speak to D.C. Act 4-69.

Senator MATHIAS. Those items will be included in the record of this hearing, as you request.

[The material follows:]

Republican Study Committee

FACT SHEET

RICHARD T. SCHULZE
Chairman
RICHARD B. DINGMAN
Executive Director

THE NEW D.C. SEX LAW: THE CASE FOR CONGRESSIONAL VETO

SCOPE: This Fact Sheet will examine H. Res. 208 and S. Res. 207, to disapprove D.C. Act 4-69 (the Sexual Assualt Reform Act of 1981).

This Fact Sheet will also rebut misstatements of facts concerning D.C. Act 4-69 contained in the House D.C. Committee's Fact Sheet on the law.

Issue Definition

The D.C. Sexual Assualt Reform Act of 1981, D.C. Act 4-69, does much more than merely reform the sexual assualt codes of the District. In fact, D.C Act 4-69 explicitly repeals current statutes against deviant sexual practices, removes present protection for 16-year old students from seduction by teachers, and reduces the penalty for rape.

Either house of Congress can veto D.C. Act 4-69 during a review period ending on or about October 5th, by passing H. Res. 208 or S. Res. 207.

D.C. Act 4-69

The new D.C. sex law was adopted by the Washington City Council on July 14, 1981, and approved by Mayor Marion Barry in July 1981. The Council almost passed an even more radical version of the law, but was forced to modify it after a loud public outcry. However, most of the objectionable features remained intact in the final version passed by the Council and approved by the Mayor.

The new law would establish four new categories of non-consensual sex -- "sexual assault" and "sexual Contact," each in the first and second degrees. The maximum penalty for forcible rape would be reduced from life imprisonment to 20 years in jail.

This fact sheet was prepared at the request of a member of the Republican Study Committee. The views contained in it should not be construed as being the views of the Republican Study Committee, its officers or its members.
ROOM 433, CANNON BUILDING, U.S. HOUSE OF REPRESENTATIVES, WASHINGTON, D.C. 20515 (202/225-0587)

D.C. Act 4-69 would remove all references to the sex of the victim and thereby extend legal protection to male victims of homosexual rape. On the other hand, by legalizing sodomy the new law would create a climate in which such attacks are more likely to occur. Male victims could easily be protected by the old law with a relatively slight modification of wording, without discarding whole sections of the old law altogether, as D.C. Act 4-69 would do.

The new law would decriminalize consensual sex acts, both homosexual and heterosexual, by those 16 years of age or over.

D.C. Act 4-69's Repeal of Existing Statutes

D.C. Act 4-69 specifically and explicitly repeals present criminal statutes against:

- seduction by a teacher of a female aged 16 to 21;
- sodomy;
- bestiality;
- adultery; and,
- fornication.

The D.C. Act also amends the indecent exposure law so as to make prosecution much more difficult.

These repeals and amendments, together with the wholesale decriminalization of consensual sex by those 16 years of age and above, would result in the following:

- the sodomy law under which former Congressman Hinson was arrested will no longer exist;
- a teacher could legally make sexual advances and have intercourse with a 16-year-old girl, so long as the student consented. (Act 4-69 does prohibit sexual acts with an inmate or a patient, but not with a student. It specifically repeals the old law that protected students aged 16-21 from seduction by a teacher.);
- a male teacher could sodomize a consenting 16-year-old male student;
- there will be no law against sex with animals;
- social legitimacy would be increased for homosexual acts; and,
- sado-masochistic sexual behavior between consenting adults and children over 16 would become much more difficult to prosecute than at present.

The elimination of the present statute against seduction of students is particularly alarming in light of what Time magazine calls "a disturbing idea [that is] gaining currency within the sex establishment: very young children should be allowed, and perhaps encouraged, to conduct a full sex life without interference from parents and the law." Mary Calderone, who heads the influential sex education organization SIECUS, says the child has a fundamental right "to know about sexuality and to be sexual." (Time, September 7, 1981.) If sex educators have these values, it is reasonable to expect their classes to make children more vulnerable to sexual exploitation, and to seduction by teachers; and if such seduction is permitted under the law with 16-year-old students, it is almost certain to have a ripple effect on younger students, also. Furthermore, the present criminal law upholds certain standards of sexual behavior; now, sex educators in Washington must at least refer to them when discussing norms in sex education classes.

It is commonly recognized that any law has an important teaching function. The current law teaches that certain sexual norms are binding and worthy of legal sanction. The new law would teach the opposite.

The outrages of D.C. Act 4-69 are no accident. The framers' mentality is illustrated by their attempts to repeal the old incest law and the child sex laws. The author of D.C. Act 4-69, Councilman David Clarke, said "teenaged sexual activity that is consensual is not an area for criminal law." Accordingly, his original version would have allowed consensual sex and intercourse between children aged 12 and over (if the partners were not more than four years apart in age), and even between children under 12 (provided the children were not more than two years apart in age). The recklessness of the D.C. Council is measured by the fact that the Judiciary Committee reported that version unanimously, and six of the thirteen Council members went on record supporting that original version, according to The Washington Post. The Post applauded the original version editorially, as "Good work that the city can be proud of."

When these provisions on child sex were publicized, Washingtonians loudly protested. In response, the City Council struck from the new bill those sections that would have specifically permitted sexual activity between children of comparable ages, and the Council also removed the repeal of incest. Aside from a few deletions, the Council let objectionable features remain in Act 4-69 when they passed it.

Will Washington Become America's Gay Capital?

The Washingtonian magazine featured a cover story last September with the question: "Is D.C. Becoming the Gay Capital of America?" The magazine's cover featured a photograph of a laughing Mayor Barry with his arms draped over the shoulders of two gay activists at Gay Pride Day. "Gays were Mayor Barry's key voting block," the Washingtonian said, "and now the homosexual population of Washington is growing in numbers, visibility and clout."

If, in fact, Washington is becoming "the gay capital of America," D.C. Act 4-69 would greatly accelerate the process. Without question, D.C. Act 4-69 would give increased legal and social approval to homosexual acts, and the law would provide a tremendous demonstration of gay political clout. If congress votes to uphold D.C. Act 4-69, it will go on record as consenting to these consequences.

The Indecent Exposure Law Could Not Be Used to Prosecute Private, Consensual Homosexual Acts.

The supporters of D.C. Act 4-69 have argued that sodomy could still be prosecuted under the indecent exposure statute in the D.C. code. This is a half truth at best.

In fact, the author of the legislation, David Clarke, has repeatedly stated that the new law would legalize consensual sexual behavior, including homosexual behavior. This is why gay activists have supported the law. D.C. Act 4-69 specifically repeals the sodomy statute, and does not include sodomy in its amendment of the existing indecent exposure statute. Even under the existing indecent exposure statute (prior to amendment by 4-69) it is unclear that consensual sodomy is included. (Rittenour v. District of Columbia stated that 22-1112, the indecent exposure law, "is not designed or intended to apply to an act committed in privacy or presence of a single, consenting person ... homosexuality is not a crime.")

The use of the indecent exposure law against sodomy is fatally weakened by D.C. Act 4-69's amendment to the indecent exposure law. D.C. Act 4-69 adds a new requirement for conviction of indecent exposure, namely a higher level of intent: the behavior must now be made "with reckless disregard that someone perceiving the proposal will be seriously offended." This requirement certainly would not be met in the case of private, consensual sodomy, and probably would not be met even in cases where the act occurs in locked stalls in public restrooms. Therefore, the indecent exposure law as amendment by D.C. Act 4-69 is weakened to the point of powerlessness so far as prosecution for private, consensual sodomy is concerned.

The Federal Interest in Washington

Proponents of D.C. Act 4-69 have tried to cloud the substantive issues in the law by invoking home rule. This incantation of slogans about home rule obscures the real federal interest in Washington's criminal statutes, and the Constitutional obligation on Congress to exercise legislative authority over the nation's capital.

The federal interest in Washington is established by the following:

- Washington is the nation's capital, and belongs to all Americans as no other city;
- Washington is the most visible American city, and what happens here sends a signal to the world of the standards we advocate as a nation;
- Washington contains the largest concentration of federal employees; the government has an interest in the criminal statutes controlling their behavior; and,
- Washington's decriminalization of deviant behavior will have a spill-over effect on Virginia, Maryland and other states.

The Constitution Charges Congress with Legislative Authority Over the District

The Constitution recognizes and requires extraordinary Congressional responsibility for the District when it grants to Congress the "power ... to exercise exclusive legislation in all cases whatsoever, over such District ... as may ... become the seat of the Government of the United States...." (Article 1, Section 8).

When Congress granted limited self-government to Washington, it specifically reserved to itself ultimate legislative jurisdiction over the capital. The D.C. Self-Government and Governmental Reorganization Act of 1973 contains a "reservation of Congressional Authority" provisions. Section 601 states:

> Notwithstanding any other provision of this Act, the Congress of the United States reserves the right, at any time, to exercise its constitutional authority as legislature for the District, by enacting legislation for the District on any subject, whether within or without the scope of legislative power granted to the Council by this Act, including legislation to amend or repeal any law in force in the District prior to or after enactment of this Act and any act passed by the Council.

Washington Residents Have Appealed to Congress to Disapprove D.C. Act 4-69

Rev. Carey Pointer, President of the Baptist Ministers' Conference of D.C. and vicinity:

> If you take these (crimes) off the books, you send out a signal that it's all right to commit adultery, it's all right to commit fornication, it's all right to engage in homosexual activity.
>
> The D.C. Act can and should be vetoed.

Rev. Cleveland Sparrow, President of Sparroworld Baptist Corporation:

> Congress must learn that the D.C. City Council did not hold hearings to obtain our views on this matter.
>
> The Act is not a home rule issue ... but a national "home ruin issue" and a nationwide disaster. Only the gay lobbies knew what was in D.C. Act 4-69 when hearings were held last March.

The Federation of Citizens Associations of the District of Columbia:

> The Federation of Citizens Associations of the District of Columbia hereby petitions the Congress to disapprove D.C. Act 4-69 .... This act legalizes every sexual act, whether a sodomy, a sadism, or any other perversion purportedly committed with the "consent" of any party 16 years or more of age...
>
> We feel a double obligation in petitioning Congress in this matter. First, we appeal as citizens and residents of this city who will be denied a quality of social and moral life equal to that which citizens of other jurisdictions enjoy. But, equally, we feel an obligation to write to you on behalf of all the citizens of the United States, asking you as their representatives to protect the good name and reputation of our nation's capital for all Americans.

The Procedure for Single-House Veto

Congress has a Constitutional and statutory obligation to exercise its legislative jurisdication over the capital, especially in the case of flagrantly irresponsible acts by the City Council. To accede to the proponents of D.C. Act 4-69 that "home rule" precludes Congressional oversight would be to abandon a clear Constitutional duty.

Under provisions of the Self-Government Act, either house of Congress can veto a D.C. measure respecting a criminal statute by adopting a resolution of disapproval during a 30-day period (not counting Saturdays, Sundays holidays or any days in which either House is not in session) beginning on the day such an act is transmitted to Congress. Accordingly, either House can overturn D.C. Act 4-69 during the period ending on or about October 5th.

The passage of either H. Res. 208 or S. Res. 207 would veto D.C. Act 4-69. The bills were referred to the House D.C. Committee and the Senate Governmental Affairs Committee respectively. If these committees fail to report the resolutions by September 29, a single Member can make a privileged motion to discharge the resolution of his House to the full House or Senate.

H. Res. 208 is sponsored by Reps. Phil Crane, McDonald, Marriott, Staton, Rudd, Vin Weber, Dan Crane, Jim Hansen, Siljander, Dannemeyer, Stump and Robinson.

S. Res. 207 is sponsored by Sens. Denton, Hatch, Helms, East, and Thurmond.

Conclusion

D.C. Act 4-69 is a bad bill. The Congress has the right and responsibility to veto bad D.C. legislation. Home rule by the D.C. government is a privilege granted by the Congress, which has ultimate Constitutional responsibility for the Federal City. Home rule is not an absolute right.

Legislation such as 4-69 blatantly flies in the face of the standards and values of most Americans. Failure by the Congress to intercede in this matter will send a message to every Congressional district and around the world that the Congress approves of both a variety of deviant sexual acts, and a major reduction of penalties for acts which have long been considered criminal by the vast majority of Americans.

* * * * * * *

ADDENDUM

Misstatements Contained in the "Fact Sheet" Circulated by Delegate Fauntroy

On September 14, 1981, Delgate Fauntroy distributed a so-called "fact sheet" concerning D.C. Act 4-69 which contains large numbers of misstatements. Following is a list of the misstatement, accompanied by a factual reply.

1. FACT: D.C. Act 4-69 repeals the statute under which Congressman Hinson was arrested in the Longworth Building.

FAUNTROY MISSTATEMENT ATTEMPTING TO REBUT FACT: "Activity which Mr. Hinson was alleged to have committed would continue to be prosecutable as a public indecent act under D.C. Code, sec. 22-1112."

FACTUAL REBUTTAL TO FAUNTROY MISSTATEMENT: As The Washington Post indicated on May 29, 1981, Rep. Hinson was arrested for oral sodomy, not indecent exposure, as Fauntroy incorrectly suggests. Furthermore, there is serious question whether the indecent exposure laws cover consensual sodomy, including sodomy in locked stalls of public restrooms. Rittenour v. District of Columbia stated that 22-1112 "is not designed or intended to apply to an act committed in privacy or presence of a single, consenting person." It went on to state that "homosexuality is not a crime." (163 A.2d 558) At best, the cases are mixed on this issue.

2. FACT: D.C. Act 4-69 effectively removes all sanctions against homosexual conduct in the District of Columbia.

FAUNTROY MISSTATEMENT ATTEMPTING TO REBUT FACT: "The Act does not eliminate all prohibitions against homosexual conduct. Indeed, the act increases the prohibitions. The penalty for forcible homosexual activity is doubled. The District law on prostitution is amended to prohibit homosexual, as well as heterosexual prostitution. The laws prohibiting statutory rape have been expanded to prohibit sexual conduct, including homosexual conduct, with boys as well as girls where it now only protects young girls from sexual intercourse. The laws against public homosexual conduct would remain in force. Section 22-3502 of the D.C. Code would be repealed by the law. Section 22-3502 provides a ten-year maximum penalty for certain sexual conduct and applies to conduct by and between married parties committed in the privacy of their bedroom. Taken in the context of other laws remaining upon the books and to be placed upon the books, the only prohibition removed by this repeal is that applying to adult, consensual, private, non-commercial activity. While that conduct could be homosexual in character, most of it is heterosexual and much of that is between married people."

FACTUAL REBUTTAL TO FAUNTROY MISSTATEMENT: Several of Fauntroy's statements are simply factually incorrect: (1) The maximum penalty for sodomy under 22-3502 is not ten years, as Fauntroy erroneously states, but 20 years for consensual sodomy with a child. If force were involved, this would probably be compounded with additional assault charges. Hence, 4-69 would punish forced homosexual rape of a little boy with exactly the same penalty that applies to consensual sex with that boy, and with considerably lighter penalties than currently apply to rape of the boy. (2) Contrary to Fauntroy's erroneous statement, the prostitution statute currently applies to homosexual, as well as heterosexual conduct. Section 22-2701 states: "It shall not be lawfulfor any person to invite ... any person or persons ... for the purpose of prostitution." Specifically, Harris v. United States, 293 A.2d 851, held that section 22-2701 "applies to solicitation for homosexual acts." (3) The maximum penalty for homosexual statutory rape, which is now covered by the sodomy laws, would remain exactly the same, contrary to Fauntroy's implication that this conduct is not covered by current law. (4) As has been seen, Rittenour v. District of Columbia throws serious doubt on whether the indecent exposure laws would cover consensual homosexual activity within a locked stall of a public restroom.

No one has ever contended that D.C. Act 4-69 would allow homosexuals to rape or run through the streets naked. What has been stated is that the basic homosexual act (i.e., "homosexual conduct") would be legalized. To the extent that Fauntroy views homosexual rape as "homosexual conduct," rather than an aberration, it says something about his opinion of the emotional stability of this group.

3. FACT: D.C. Act 4-69 repeals statutes prohibiting adultery and fornication.

FAUNTROY MISSTATEMENT ATTEMPTING TO REBUT FACT: "The bill does not remove all sanctions regarding adultery and fornication. Adultery remains a consideration in the child custody and property disposition aspects of divorce cases as does fornication in paternity cases. What is repealed is the one-year maximum criminal penalty for fornication and the two-year maximum penalty for adultery. Thus, adultery and fornication are not socially uncondemned much less condoned or encouraged. They are simply not on (sic) the basis for incarceration."

FACTUAL REBUTTAL TO FAUNTROY MISSTATEMENT: The only representation which opponents of 4-69 have made is that it "repeals statutes prohibiting adultery and fornication (22-301 and 22-1002)," which Fauntroy concedes.

4. FACT: D.C. Act 4-69 repeals the D.C. law prohibiting sexual seduction of a child by a teacher and legalizes a sexual advance by a teacher, against a 16-year-old child, so long as no force is used.

FAUNTROY MISSTATEMENT ATTEMPTING TO REBUT FACT: "Any sexual activity with any person under the age of 16 will remain a most serious crime under the bill, even if consensual. Section 22-3002 of the Code would be repealed which prohibited consensual sexual conduct by a male teacher with a female student between the ages of 16 and 21. However, sec. 6 of the bill would criminalize this activity if the relationship were custodial, i.e., if the teacher were in a supervisory relationship in a residential setting.... Indecent sexual proposals would continue to be prosecutable under sec. 22-1112 of the D.C. Code."

FACTUAL REBUTTAL TO FAUNTROY MISSTATEMENT: Fauntroy does not dispute the truth of either of these assertions. Nothing could be clearer than that section 22-3002 (seduction by teacher) is repealed by section 13 of D.C. Act 4- 69. That another law which is currently in effect would also cover seduction of a child under 16 years of age does not speak to the basic purpose of section 22-3002: to add sanctions for conduct not constituting statutory rape if occurring within the particularly abominable circumstances of a teacher-student relationship. Contrary to Fauntroy's assertions, sexual relationships between a custodian and his/her charge would currently be unlawful under adultery, fornication, sodomy, etc. Reliance on section 6 would, in some cases, substantially reduce the penalties applying to custodians who abuse their wards.

As has been seen twice before, section 22-1112 (indecent exposure) may very well not apply to <u>any</u> consensual act; and, at any rate, certainly does not apply to most sexual propositions, given that the resultant sexual act is not itself unlawful.

5. FACT: D.C. Act 4-69 reduces the penalty for forcible rape from life imprisonment to twenty years in jail.

FAUNTROY MISSTATEMENT ATTEMPTING TO REBUT FACT: "The maximum penalty for rape was lowered from life to twenty years at the unanimous request of women's groups who argued that more convictions could be obtained if judges, juries, and prosecutors were not so taken with the extremity of the punishment."

FACTUAL REBUTTAL TO FAUNTROY MISSTATEMENT: Since there is no requirement that a convicted defendant be given the maximum penalty, and since most convictions occur as a result of plea bargaining, this argument is little short of ridiculous. This is probably the first, last, and only time in which Congress will be asked to reduce criminal penalties in order to increase the effectiveness of a crime. In fact, we are reliably informed that the average time served by a person charged with a crime carrying a maximum penalty of twenty years is less than two years.

[Addendum by Mike Hammond, Senate Republican Steering Committee]

* * * * * * * * * * *

Jack Klenk
September 25, 1981

Congressional Research Service
The Library of Congress

Washington D.C. 20540

September 22, 1981

TO : Senate Republican Policy Sterring Committee
Attention: Gary Bradshaw

FROM : American Law Division

SUBJECT : Bestiality Under the District of Columbia Code

You have asked whether there would be any District of Columbia criminal statute outlawing bestiality were the District of Columbia Sexual Assault Reform Act of 1981, Act 4-69, July 14, 1981, permitted by Congress to go into effect.

Black's Law Dictionary (4th ed., 1968, at 203) defines "bestiality" as "[a] sexual connection between a human being and a brute of the opposite sex." Webster's Third New International Dictionary (1976, at 208), contains as third meaning for the term the following: "sexual relations between a human being and an animal."

The definition of sodomy contained in the current section 3502 of title 22 of the District of Columbia Code specifically outlaws certain sexual contact by a human with an animal:

(a) Every person who shall be convicted of taking into his or her mouth or anus the sexual organ of any other person or animal, or who shall be convicted of placing his or her sexual organ in the mouth or anus of any other person or animal, or who shall be convicted of having carnal copulation in an opening of the body except sexual parts with another person, shall be fined not more than $1,000 or be imprisoned for a period not exceeding ten years. Any person convicted under this section of committing such act with a person under the age of sixteen years shall be fined not more than $1,000 or be imprisoned for a period not exceeding twenty years. And in any indictment for the commission of any of the acts, hereby declared to be offenses, it shall not be necessary to set forth the particular unnatural or perverted sexual practice with the commission of which the defendant may be charged, nor to set forth the particular manner in which said unnatural or perverted sexual practice was committed, but it shall be sufficient if the indictment set forth that the defendant committed a certain unnatural and perverted sexual practice with a person or animal, as the case may be: *Provided*, That the accused, on motion, shall be entitled to be furnished with a bill of particulars, setting forth the particular acts which constitute the offense charged.

(b) Any penetration, however slight, is sufficient to complete the crime specified in this section. Proof of emission shall not be necessary. June 9, 1948, ch. 428, Title I, § 104, 62 Stat. 347.

That provision of the District of Columbia Code is, however, specifically repealed by section 13 of the Sexual Assault Reform Act of 1981. Your question, then, is under what other law of the District of Columbia may sexual relations between a human being and an animal be penalized. To answer this we examined the other criminal offenses defined in the new law and other chapters of the District of Columbia Code. We have concluded that, given the proper factual context, human sexual activity with an animal could be prosecuted under at least three provisions of District of Columbia law were the Sexual Assault Reform Act to take effect:

1. Section 1112 of title 22 (Sec. 12(e) of the Sexual Assault Reform Act) provides that:

> Any person or persons who makes an obscene or indecent exposure of his or her person, or commits any other lewd, obscene, or indecent act, or makes a lewd, obscene, or indecent proposal with reckless disregard

that someone perceiving the proposal will be seriously offended, commits an offense and upon conviction shall be fined not more than three hundred dollars ($300), or imprisoned for a term not exceeding ninety (90) days, or both, for each and every such offense.

2. Section 801 of title 22 provides:

> Whoever overdrives, overloads, drives when overloaded, overworks, tortures, torments, deprives of necessary sustenance, cruelly beats, mutilates, or cruelly kills, or causes or procures to be so overdriven, overloaded, driven when overloaded, overworked, tortured, tormented, deprived of necessary sustenance, cruelly beaten, mutilated, or cruelly killed any animal, and whoever, having the charge or custody of any animal, either as owner or otherwise, inflicts unnecessary cruelty upon the same, or unnecessarily fails to provide the same with proper food, drink, shelter, or protection from the weather, shall for every such offense be punished by imprisonment in jail not exceeding one year, or by fine not exceeding two hundred and fifty dollars, or by both such fine and imprisonment. Leg.Assem., Aug. 23, 1871, p. 135, ch. 106, § 1.

3. Section 802 of title 22 provides that:

> Every owner, possessor, or person having the charge or custody of any animal, who cruelly drives or works the same when unfit for labor, or cruelly abandons the same, or who carries the same, or causes the same to be carried, in or upon any vehicle, or otherwise, in an unnecessarily cruel or inhuman manner, or knowingly and wilfully authorizes or permits the same to be subjected to unnecessary torture, suffering, or cruelty of any kind, shall be punished for every such offense in the manner provided in section 22-801. Leg.Assem., Aug. 23, 1871, p. 135, ch. 106, § 2.

Although none of these provisions specifically mentions sexual contact between a human and an animal as prohibited activity, it appears that they could be used to prosecute such activity were additional factors involved: section 12(e) requires "reckless disregard" that someone will be "seriously offended;" section 801 requires that the imposition upon the animal rise to the level of "torment" or "torture" or that "unnecessary cruelty" be shown toward the animal; and, section 802 requires that the owner of the animal be involved and that there be an element of knowing or willful authorization that the animal be subjected to "unnecessary torture, suffering, or cruelty of any kind."

Although conduct amounting to bestiality might well be chargeable under these statutes, it is possible that such prosecutions will not be brought under them. At common law this crime was perceived as so heinous that it caused Blackstone, to make the following comments: IV Commentaries *214 (1803),

> What has been here[1/] observed, especially with regard to the manner of proof, which ought to be more clear in proportion as the crime is the more detestable, may be applied to another offence, of a still deeper malignity; the infamous crime against nature, committed either with man or beast. A crime which ought to be strictly and impartially proved, and then as strictly and impartially punished. But it is an offense of so dark a nature, so easily charged, and the negative so difficult to be proved, that the accusation should be clearly made out: for if false, it deserves a punishment inferior only to that of the crime itself.

We hope this information is helpful to you.

M. Maureen Murphy
Legislative Attorney

1/ Referring to the charge of rape committed on an infant under twelve years old.

Senator MATHIAS. Well, thank you very much, gentlemen.

Dr. Godwin has asked the question: Do you as a Member of Congress favor this or that or the other? Of course, we are faced with not a simple decision as to being for or against something. We have to choose between something.

I could say to Dr. Godwin, are you, as a member of the Moral Majority, in favor of homosexual prostitution, which will be decriminalized by the passage of the resolution?

Mr. GODWIN. Are you asking that question, sir?

Senator MATHIAS. Yes.

Mr. GODWIN. Am I in favor of homosexual prostitution?

Senator MATHIAS. Which will be decriminalized if we adopt the resolution?

Mr. GODWIN. Sir, my attorneys tell me otherwise, and I have real reservations about accepting that particular proposal and I would be happy to produce a legal statement on that later in the day. We do have some information here.

Senator MATHIAS. The Mayor's testimony was that the City Council bill outlawed homosexual prostitution. Are you contesting the Mayor's testimony?

Mr. GODWIN. Excuse me just a moment, sir.

According to the information I have before me here, the prostitution statute currently applies to homosexual as well as heterosexual conduct. Section 22-2701 states. "It shall not be lawful for any person to invite any person or persons for the purpose of prostitution." I could continue.

I have other documentation and have been otherwise counseled. Yes. I do debate with the Mayor's contention.

Senator MATHIAS. That is something on which we will seek the advice of counsel.

You do see that it is not quite so clear.

Mr. GODWIN. I recognize your point and the spirit of what you are saying.

Senator MATHIAS. I think that, perhaps, the confusion lies in the fact that some judges in looking at the previous law have come to one conclusion, and some judges have come to another conclusion.

The new Council bill is explicit in outlawing homosexual prostitution. It does not then become a question of how any individual judge would interpret the law. It becomes a matter of the law.

Our task is not a simple choice between everything on one side and nothing on the other, but one of making a choice among various alternatives.

The question of homosexual prostitution has been a sad story in the District of Columbia. We have had some very tragic consequences. I, personally, think that it should be outlawed.

Yes, Mr. Frain?

Mr. FRAIN. I think, Mr. Chairman, the point that you make is a valid one. I quoted from part of Archbishop Hickey's letter. He says in his pastoral letter that:

> The Council of the District of Columbia enacted legislation this week intended by its authors to modernize and consolidate the laws of the District of Columbia regarding sexual assault. The bill broadens the traditional definition of rape to include forms of compulsion other than physical force. Efforts to combat rape more effectively are commendable.

I am pleased also that the provisions protecting children and minors from sexual abuse remain in the law.

I want to make a point. I testified on behalf of our federation. I think it was on March 12 or 13. I do not have the exact date. We were supporting those provisions which the archbishop supports in his letter.

There are good things in the bill. My suggestion for this committee might be to reject section 13, which is on pages 13 and 14 of D.C. Act 4-69, and to keep the rest of it.

In other words, I think Archbishop Hickey and the Mayor are right, they made the point, and it was made by Judith Rogers, the corporation counsel, that there are some good things in D.C. Act 4-69. What we are saying is that there are good provisions in the bill, which we supported, which the archbishop is supporting, and which other people have supported.

Our objection is with the decriminalization of sodomy, seduction, fornication, adultery, and so on. That is at the end of the D.C. Act 4-69, in section 13.

It may be that you have to throw out the baby with the bath in order to save the good things. My suggestion is that D.C. Act 4-69 be sent back to the City Council by adoption of Senator Denton's Resolution of Disapproval, S. Res. 207. Let the City Council rework it, and put the whole sodomy provision up to the voters of the city. I think that the voters are adult enough.

I think that the Baptist ministers, the Catholic priests of this city, and every other religious denomination—including the storefront churches—and the two citizen and civic federations will help put section 13 to a referendum. We will help, I am sure. You can ask Rev. Carey F. Pointer and Arthur Meigs, who are here.

The thing is to separate out for a referendum vote this technical jargon in section 13, which was not discussed, was not explained, was not brought to the attention of the citizens of the District of Columbia as to the real intent of this awful legislation.

What you have done and what Congressman Dellums has done is to focus congressional and nationwide attention on the sections which are bad in D.C. Act 4-69, particularly in section 13.

There are some good things in this legislation. I think the Mayor is right to a certain extent, but get rid of the sodomy provisions, and let the citizens of the District of Columbia work their will on that in a referendum, authorized in the Home Rule Act. Show your confidence in home rule, and ask Mayor Barry to put this up to the citizens of the District of Columbia, who at this point, I can assure you, as Reverend Fowler has indicated, are well aware of the sodomy provisions, etc., in the final pages of D.C. Act 4-69.

I think that a referendum on section 13 alone would support home rule. I think that, to say—as I understood the Mayor to say—that home rule rises or falls on the vote on this thing by the Senate and House is completely wrong. Why doesn't he call for a referendum on the section 13 provisions?

Those provisions were not even presented honestly and openly to the citizens of the District of Columbia. Those section 13 provisions of the act should be sent to a referendum, so that the citizens will have a chance to debate them, to discuss them, and to vote them up or down.

I think and hope the Mayor would agree with that.

Mr. FOWLER. First of all, Mr. Chairman, let me say that the ministry and our parishoners are not agreed that we should call anything legal which God calls illegal. If God calls fornication, adultery, and sodomy illegal, then as far as we are concerned, it is illegal.

On the other hand——

Senator MATHIAS. Reverend, that is good law. Blackstone, the great English writer of law, said that: "The law should be the highest expression of the ethics of the Nation."

Mr. FOWLER. That is right.

I was about to say that our present law, the law which is in effect in the District of Columbia now, outlaws homosexual prostitution. Any kind of homosexuality, prostitution or otherwise, is outlawed.

Another misconception is that—Someone in the City Council is going around spreading the idea that the law which we have now treats men differently than it does women. Not a word of that is true.

We had our lawyers research it throughout the United States. It was found that, every time it came up in courts, it was knocked down, because it was said that it does not treat them differently.

The law which we have in effect now, if applied, would have to treat men the same as women. I think we ought to be clear on that.

May I ask, Mr. Chairman, whether, if my committee wishes to submit its research documents later, it may do so?

Senator MATHIAS. Without objection, we will keep the record open so that you may have that privilege.

Mr. FOWLER. They did not tell me to give it to you, but if they do, I will. Thank you.

Mr. GODWIN. I have been informed, Mr. Chairman, by my counsel that *Harris* v. *the United States* held that section 22-2701 does apply to solicitation for homosexual acts.

Mr. MATHIAS. If that is an object to be desired, of course it would be preferable to have it in the written law rather than in case law.

Mr. GODWIN. We will do our best to get it to you in any form you prefer, sir. The point was one raised by the chairman, and we will be happy to help in whatever way possible.

I would like to make one last comment. That is this. I still contend, as I have in my testimony, that Washington, D.C., is not another city, not another jurisdiction. It is a unique, one only, Capitol of the United States. It is symbolic. It is an example. It is watched. It is revered by over 200 million Americans.

As I have traveled across the length and breadth of this Nation continuously—in the last month, everywhere I went to speak on this subject, Americans are horrified. They are not interested in procedural nuances. They are not interested in legaleze. They are not interested in technicalities.

They are simply appalled by the fact that this Congress is on the verge, by acquiescence, of ratifying D.C. Act 4-69.

I do not know how to put it any more forcibly, sir, except to say that American citizens are not saying that this law has no redeeming value. We are simply saying that its liabilities——

Senator MATHIAS. You say that they do not say it has no redeeming value.

Mr. GODWIN. That is right.

However, what I am saying is——

Senator MATHIAS. In other words, there is some strengthening of the sexual assault laws contained in the Council's bill.

Mr. GODWIN. However, the liabilities so outrageously outway the benefits that you cannot countenance this particular law.

I suppose there may never have been a law promoted which does not have some redeeming value. The judgment must come down as to whether——

Senator MATHIAS. I think I could think of one or two in the course of 20 years in Congress. [Laughter.]

Mr. GODWIN. I suppose the sponsor would argue that with you.

Senator MATHIAS. I am not even sure that the authors of some of those bills would defend them. [Laughter.]

Mr. GODWIN. Perhaps not.

I appreciate the opportunity to speak here. I appreciate your time and patience.

Senator MATHIAS. Let me ask you a personal question. There was a very great clergyman in Virginia a few years ago named Godwin, Rev. W. A. R. Godwin, director of the Bruton Parish Church.

Mr. GODWIN. There was a Governor down there too by the name of Mills Godwin. I can only say that I cannot directly ascertain any direct connections.

Generally, my people came from the States of Virginia and North Carolina. If they are famous and well known, I would like to be associated with them. If otherwise, I would like to disassociate myself. [Laughter.]

Senator MATHIAS. As you know, we are all God's children—[chorus of amens]—whether we are sinners or otherwise. I do not know that we can deny those relationships on the basis of merit.

Mr. GODWIN. That is true.

Senator MATHIAS. Thank you, gentlemen.

[Mr. Frain's prepared statement, with attachments, follow:]

PREPARED STATEMENT OF J. GEORGE FRAIN

We appreciate the privilege of testifying, and ask you to include our statement in the record.

We want to go on record as strongly supporting S. Res. 207, and H. Res. 208. We and all other D.C. citizens were not permitted to testify in the House hearing—which is most regrettable. All DC citizens were also denied due process, a Constitutional requirement, by the D.C. City Council and Mayor Marion Barry Jr. because they provided no section-by-section analysis of D.C. Act 4-69 and its predecessor Bill No. 4-122, nor were citizens of the District of Columbia provided an explanation of the intent of this legislation by these public, elected officials, which would indicate that there would be a complete repeal of the sodomy, fornication, adultery, and seduction statutes, and make sodomy and lesbianism as free as it was in ancient Greece and Rome.

We would urge the Senate to take note of the fact that this is the only explanation provided by Hon. David A. Clarke in introducing D.C. Bill 4-122 on February 10, 1981 as to the bill's intent: I have a copy of his statement with me at this time, and it says only this:

"I am also introducing the "District of Columbia Sexual Assault Reform Act of 1981" to modernize our laws in this area. It will create two grades of sexual assault. The first will include what is now charged as rape or forcible sodomy plus sexual acts forced by placing one in fear of kidnap or by drugging the victim without her or his knowledge. It will divide what is now known as statutory rape into two de-

grees: sex with an older child (consensual sex between a child between 12 and 16 and a defendant at least four years older) and sex with a younger child (consensual sex between a child under 12 and a defendant at least 13 years old). It will provide penalties for unlawful sexual acts with wards, inmates, or patients where the nature of the relationship is abused. And it will provide penalties for unlawful sexual contact using a similar grading. The doctrine of spousal immunity, whereby a spouse cannot charge the other with rape, will be abolished for first degree sexual assault."

It is clear the D.C. City Council deliberately withheld vital information as to the legislative intent to abolish the present criminal penalties as to consensual sex between adults, make seduction of a child by a teacher of a boy or girl 16 years of age legal, and to make legal the conduct of Congressman Hinson in a men's room in the House Office Building, or any other public place including the streets.

Furthermore, there wasn't a word about legalizing sodomy, seduction of minors by teachers, adultery, and fornication in the testimony of the D.C. Corporation Counsel, Judith Rogers, for the Executive Branch agencies and Mayor Barry, and this was also true of the testimony of Police Chief Burtell Jefferson, and U.S. Attorney for D.C. Charles Ruff. This omission was deliberate, and they all failed to alert District citizens and heads of families, and church leaders. But the Gay community knew what was in this new legislation. They supported it.

The D.C. City Government clearly was not given authority by the Congress in the Home Rule Act to make another Sodom out of the Nation's Capital.

Congress did not delegate to the D.C. Government in the Home Rule Act the authority to destroy homes and family life by legalizing sodomy, fornication, adultery and seduction of teen-age boys and girls, and approving these life-styles for America.

A year ago, the Washingtonian Magazine (Sept., 1980) asked "Is DC Becoming the Gay Capital of America" and showed the inroads which Gays had achieved in controlling the political decisions of the Mayor and City Council. I submit a copy of this article which names names, and gives an in-depth look at the real situation in D.C.

The Washington Post, August 27, 1981 reported the Mayor Barry had appointed a homosexual activist to the Alcoholic Beverage Control Board; there are, said the Post, 32 (gay-oriented) restaurants in DC, and the appointment was celebrated in private in Mayor Barry's office from which the public and the news media were excluded.

The Catholic Archbishop of Washington, James A. Hickey, wrote in the Catholic Standard (July 16, 1981) that: "The new legislation, however, removes civil prohibitions with regard to adultery, fornication and sodomy. By so doing the law withdraws significant support for fundamental values of our Jewish and Christian moral tradition. The fabric of society is weakened when basic values of family life and human sexuality are no longer protected by law. Adultery, fornication, and sodomy are immoral. The withdrawal of civil prohibitions and penalties does not make them morally permissible. They are wrong because of the very nature of human love, sexuality and the family."

The D.C. Chapter of the Knights of Columbus recently adopted a resolution strongly endorsing and backing the views of Archbishop James A. Hickey. Martin Ryan is head of the D.C. Chapter of the Knights of Columbus.

The Washington Star (July 15, 1981) reported that Rev. Carey Pointer, president of the Baptist Ministers Conference of the District of Columbia—consisting of some 500 Baptist ministers—had denounced the legislation to legalize sodomy, fornication, and adultery.

On August 17, 1981 the Federation of Citizens Associations of the District of Columbia petitioned the Congress to disapprove D.C. Act 4-69 and strongly denounced the legalizing of sodomy, fornication, adultery, and seduction.

On September 12, 1981 the D. C. Federation of Civic Associations, Inc., consisting of 56 local civic and citizens associations in the District of Columbia petitioned the Congress to disapprove D.C. Act 4-69 and said "We regard the steam-roller legislative procedure employed as a travesty of the local legislative process intended by our Home Rule Act." See "History of D.C. Act 4-69" below.

On August 13, 1981 the Federation of Citizens Associations of the District of Columbia wrote to the Reverend Jerry Falwell requesting help from the Moral Majority which, up to that time, had not taken a position on the nation-wide "home-and-family-ruination aspects of D.C. Act 4-69". On August 19, six days later, the Moral Majority and Rev. Falwell wrote: "We are moving to mobilize Moral Majority and are working hard to find sponsors in both the House and Senate to stop this D.C. Act." On August 24 the Moral Majority Report carried a major article titled: "D.C. Sex Laws Outrageous, Congress Urged to Veto Liberal Package". This article pointed out that if passed into law by Congress, D.C. Act 4-69 would, among other things,

1. Repeal the statute under which Rep. Hinson was arrested and charged with sodomy in a House office building.
2. Effectively remove all sanctions against homosexual conduct in the District of Columbia.
3. Repeal statutes prohibiting adultery and fornication.
4. Repeal the D.C. law prohibiting sexual seduction of a child by a teacher.
5. Legalize a sexual advance by a teacher against a 17-year-old child, so long as no force was used.

History of D.C. Act 4-69.—There was no report on intent, or section-by-section analysis, of D.C. Act 4-69, or of the legislation (Bill 4-122) when the Judiciary Committee of the City Council held hearings in March 1981, so citizens did not know it proposed to legalize sodomy, fornication, adultery, and seduction. Corporation Counsel Judith Rogers, Police Chief Burtell Jefferson, Mayor Barry, and U.S. Attorney for D.C., Charles Ruff, deliberately failed to point out that sodomy etc. would be legalized by D.C. Act 4-69 and Bill 4-122 at the March 1981 hearings. The real intent of D.C. Act 4-69 and Bill 4-122 was known only to the homosexual community, David A. Clarke, and these officials (Rogers, Jefferson, Barry & Ruff) but was carefully withheld from the community. They failed to protect the entire community, its homes and families and were concerned only with advancing homosexuality and sodomy.

We strongly urge two steps: 1) Congressional Adoption of S. Res. 207 and House Res. 208; 2) that Mayor Barry and the D.C. City Council move with the help of the opponents of D.C. Act 4-69 to put this proposal on a referendum city-wide at the earliest date possible.

[From the Catholic Standard, Washington, D.C., July 16, 1981]

Letter From Archbishop

My brothers and sisters in Christ, the Council of the District of Columbia this week enacted legislation intended by its authors to modernize and consolidate the laws of the District regarding sexual assault. The bill broadens the traditional definition of rape to include forms of compulsion other than physical force.

Efforts to combat rape more effectively are commendable. I am pleased, also, that the provisions protecting children and minors from sexual abuse remain in the law.

The new legislation, however, removes civil prohibitions with regard to adultery, fornication and sodomy. By so doing the law withdraws significant support for fundamental values of our Jewish and Christian moral tradition. The fabric of society is weakened when basic values of family life and human sexuality are no longer protected by law.

Adultery, fornication and sodomy are immoral. The withdrawal of civil prohibitions and penalties does not make them morally permissible. They are wrong because of the very nature of human love, sexuality and the family. Our present situation, therefore, makes it even more necessary that the family and the Church community offer guidance and encouragement in the areas of moral judgment and value formation based on the enduring law of God taught to us by the Lord Jesus.

Each of us should take this occasion to renew our own dedication to the teaching and example of Christ and to pray that our society will uphold those fundamental human values received from God Himself. They are for the welfare of our families and of people everywhere.

Asking your prayers for all families and for all who seek to live in Christ Jesus, I am,

Sincerely in Christ,

James A. Hickey,
Archbishop of Washington.

[From the Catholic Standard (Washington, D.C.), Aug. 27, 1981]

Archbishop's Letter Prompts Groups To Petition Congress Against D.C. Sex Law

You might wish to support our effort as set forth in the attached letter to Congress. We were powerfully influenced by the "Letter from the Archbishop," (Stand-

ard 7/16). You might want to publish our letter in your letters column—we would like that. We fully support the position taken by Archbishop James A. Hickey.

J. GEORGE FRAIN,

First Vice President, Federation of Citizens Associations of District of Columbia.

(The letter addressed to The Honorable George Bush, President of the Senate, and The Honorable Thomas P. O'Neill, Jr., Speaker, The House of Representatives, follows:)

Subject: Petition That Congress Disapprove D.C. Act 4-69, "District of Columbia Sexual Assault Reform Act of 1981."

The Federation of Citizens Associations of the District of Columbia hereby petitions the Congress to disapprove D.C. Act 4-69, popularly already known as "The D.C. Sodomy Licensing Act," which was submitted to the Congress on July 21, 1981, under Section 602(c) of the District of Columbia Self-Government and Governmental Reorganization Act P. L. 93-198.

This act legalizes every sexual act, whether a sodomy, a sadism, or any other perversion purportedly committed with "consent" of any party 16 years or more of age.

Athough, apparently, applying only to so-called "non-commercial" sexual acts, the extreme so-called "proposition" on which it is based, "that a secular penal code should not be used to enforce purely moral or religious standards," can lead even to legalization of prostitution, both male and female, in the Nation's Capital. For what is more clearly proof, or evidence, in a radically "secular penal code" that "consent" has been given than the exchange of some good or value between parties not otherwise obligated in any formal or material relationship to each other? If a shirt may be given to someone for nothing, it may be sold. If it may be sold, it can be bargained, advertised and solicited. The philosophic secular "proposition" for male and female prostitution is radically present in the legal premises of this Act 4-69.

Both the explicit provisions and the implicit ramifications of this act are abhorrent to the members of our Federation, who believe that a social and moral environment is being established in this city which alienates them from other communities in the United States and from the values and protections which the Articles of the United States Constitution were intended to provide them.

The Constitution of the United States states explicitly in Article 1 Section 8, paragraph 17, that the Congress shall have power "to exercize exclusive legislation in all cases whatsoever, over such district (not exceeding ten miles square) as may, be cession of particular States, and the acceptance of Congress, become the seat of the Government of the United States . . ."

Thus, under the provisions of the so-called Home Rule Act, the D.C. Act 4-69 . . . will become an Act of Congress itself, unless Congress disapproves it within 30 legislative days.

Our Federation cannot conceive that this Congress will permit such a deviant standard to apply to this nation's capital city, not only depriving its residents of the same quality of life as citizens of the 50 states enjoy but also placing the Congress on record as willing to permit social decadence and moral turpitude to have support of federal law in the nation's capital.

The provisions of this legislation affect the reputation and good name of the entire nation. This city is by Constitutional mandate the capital of our country. Within are located not only the principal executive, legislative and judicial institutions of our nation but also the diplomatic representations of all foreign countries. Major religious, charitable, labor, cultural and professional associations are established here.

In light of these conditions, we feel a double obligation in petitioning Congress in this matter. First, we appeal as citizens and residents of this city who will be denied a quality of social and moral life equal to that which citizens of other jurisdictions enjoy. But, equally, we feel an obligation to write to you on behalf of all the citizens of the United States, asking you as their representatives to protect the good name and reputation of our nation's capital for all Americans.

We have previously written on other Acts of the D.C. Council, which we considered harmful, to the Congress to no avail. The responsible chairmen of the committees of jurisdiction did not even acknowledge receipt of our communications. For this reason, because of the past indifference of the immediately responsible committees to our petitions for appropriate Congressional hearings and review, we are writing to you directly, as President of the Senate, and Speaker of the House, requesting that you kindly communicate this correspondence to all members, respectively of the Senate and the House.

With every good wish to you personally and with our prayers for blessings on the deliberations and actions of Congress, we sign on behalf of the Federation of Citizens Associations of the District of Columbia, a federation of citizens and civic associations organized March 15, 1910, and incorporated June 3, 1940.

STEPHEN A. KOCZAK, *President,*
J. GEORGE FRAIN, *First Vice President.*

D.C. FEDERATION OF CIVIC ASSOCIATIONS, INC.,
Washington, D.C., September 12, 1981.

Hon. GEORGE BUSH,
Vice President of the United States.

Hon. THOMAS P. O'NEILL,
Speaker of the House of Representatives.

Gentlemen: Reference is made to D.C. Act 4-69, sometimes referred to as the D.C. Sexual Assault Act of 1981, now before the Congress.

The D.C. Federation of Civic Associations, comprising fifty-six (56) local civic and citizens' associations in the District of Columbia, is vehemently opposed to this act. On September 9, 1981 our Executive Committee, acting for the full body under its constitution, instructed me by an overwhelming vote to write you to this effect. Strong individual expressions of opposition to the bill had preceded this action.

We hereby petition the Congress to disapprove Act 4-69, submitted to it on July 21, 1981, such disapproval being authorized by law.

Earlier this year our delegates and members, and citizens generally, were so taken aback by provisions in the bill affecting those under 16, that though these provisions were stricken from it for the time being by the City Council, other sections which are before you were left in.

Not previously highlighted in public forums, these provisions, removing all penalties from sexual acts of any kind committed with the "consent" of any party sixteen years of age or over, were passed by the Council, signed by the Mayor and submitted to Congress. There was a minimum of legislative discussion and virtually no opportunity for public input. Among acts made legal were adultery, fornication and sodomy—and others.

We regard the steam-roller legislative procedure employed as a travesty of the local legislative process intended by our Home Rule Act, as well as our opposing the substance of the above-mentioned permissive portion of the legislation. Our last recourse as citizens of the District and of the United States is to petition the Congress to veto Bill 4-69.

The Federation has since its inception in 1921 worked with the Congress for sound laws expressing our fundamental value system including many defining civil liberties. Bill 4-69 threatens our civil liberties in our view because it threatens the value system on which they, including our domestic tranquillity, are based. For this reason we consider this petition as in line with past action as well as seeking to secure the future.

We request your immediate attention in this matter.

Respectfully yours,

ARTHUR V. MEIGS, *President.*

THE MORAL MAJORITY, INC.,
Lynchburg, Va., August 19, 1981.

Mr. J. GEORGE FRAIN,
Washington, D.C.

DEAR MR. FRAIN: Thank you for your letter of August 13 in which you pointed out to Dr. Falwell and myself the urgency of dealing with Act 4-69 and in which you also provided the quote by Archbishop Hickey.

We are moving to mobilize Moral Majority and are working hard to find sponsors in both the House and Senate to stop this D.C. Act.

Thank you again for your help.

For a better America,

RONALD S. GODWIN, Ph. D.,
Vice President and Chief Operations Officer.

[From the Washington Post, Aug. 27, 1981]

GAYS HAIL BARRY'S ABC CHOICE

(By Eugene Robinson)

Reporters were not allowed to witness the swearing-in this week of Frank Zampatori as a D.C. Alcoholic Beverage Control Board commissioner in the mayor's office. "You're not always allowed access to the Oval Office, you know," city Communications Director Ed Meyers offered by way of explanation.

But the ceremony, performed by Mayor Marion Barry, was witnessed by some of the city's most prominent homosexual activists. Afterward, they were wearing Cheshire Cat smiles.

Zampatori is gay, the ABC board is one of the city's more powerful agencies, and the gay activists could hardly be happier at the appointment and what they see as increased attention from the mayor and his staff.

"Your phone calls get answered," said Andy Hirsch, vice president of the Gay Activists Alliance. "Before, you would talk to the staff member about something and then you'd talk to the mayor, and he wouldn't always be aware of what you were talking about. Now you can be sure he knows."

Gay organizations like the Gertrude Stein Democratic Club were important to Barry in his 1978 campaign. Homosexuals may not be a powerful voting bloc in Washington except in Ward 2 (which includes Dupont Circle), but they have proved to be one of the most effective special-interest groups in town. They were effective campaign workers for Barry and generally have been among his most loyal constituents.

As campaign time rolls around again, Barry wants to be able to count on an army of workers to distribute leaflets, tack up stars, staff phone banks and perform the many tasks that keep a campaign organization running. Zampatori's appointment demonstrates just how much Barry wants to keep the gays' support. It appears he's on the right track.

In a "midterm report" on the Barry Administration at the beginning of the year, the gay alliance said it was pleased with the mayor's appointment of acknowledged homosexuals to a number of D.C. boards and commissions. But the group said it wanted more gays to be appointed to panels with power, not just to the strictly advisory ones.

The ABC board, with its control over liquor licenses, is one the gay community has had its eyes on. "This is very significant for the gay community," Zampatori said moments before the swearing-in. "We have 32 (gay-oriented) restaurants and bars in the city. We haven't had many problems recently, but in the past, there have been problems."

Paul Kuntzler, a founder of the Stein Club, said that, in general, the District's ABC board has been good as far as gay establishments are concerned. But he said local gays remember the days when police conducted raids on gay bars, and are mindful of problems gay establishments have in obtaining liquor licenses in other cities around the country.

The appointment, said GAA President Melvin Boozer, "certainly won't hurt" Barry in the gay community. "In the past few months, we've been much more involved in mainstream things than ever before—advisory panels, things like that. It's just been a tremendous difference."

As he said that, Boozer was wearing one of those Cheshire grins. Barry is not the only mayoral hopeful lining up to get on the gays' good side. Former City Council chairman, Sterling Tucker, for example, spoke to a gay alliance meeting recently. Barry was scheduled to address one of the organization's meetings Tuesday night.

The area in which gays see most progress, said Boozer, is in their relationship with the police department. They distrusted former police chief Burtell M. Jefferson and he distrusted them. One of the demands of their midterm report was that Jefferson make a clear public statement that his department does not discriminate against homosexuals. Jefferson did not reply.

But the gays say they see a world of difference in the new chief, Maurice T. Turner, and view his appointment as one of the most important things Barry has done. "He's fantastic," Hirsch said of Turner. "I can't say enough good things about him."

Turner, unlike Jefferson, has been willing to talk to the gays about police-related situations on which they want action. For example, Hirsch said, Turner has asked his officers to work with gay activists on a series of murders of young black men that they think might be gay-related. There is also increased cooperation between the police and a gay-oriented telephone "crime line."

And Turner has met with the commander of the Marine Barracks in Southeast Washington to discuss the series of confrontations between gays and Marines that have taken place in the vicinity of Equus, a Capitol Hill gay bar. The situation was a sticky point between the gays and the police, and the gays now believe it to be under control.

Barry has been criticized in the past, particularly by some of the city's black ministers for his support of gay issues. But his support continues. The gays' midterm analysis was largely favorable; and they now say they've already gotten most of the things they wanted from the final two years of Barry's term.

Senator MATHIAS. Our next witness is Councilman David Clarke.

Councilman Clarke, we appreciate your being here. Your statement will be included in full in the record. I would appreciate it if you would summarize it as briefly as possible.

Mr. CLARKE. Yes, sir.

TESTIMONY OF DAVID A. CLARKE, CHAIRMAN, COMMITTEE ON THE JUDICIARY, COUNCIL OF THE DISTRICT OF COLUMBIA, ACCOMPANIED BY JILL SAYENGA, CODIRECTOR, CRIMINAL CODE PROJECT, COMMITTEE ON THE JUDICIARY, AND LORILYN SIMKINS, CODIRECTOR, CRIMINAL CODE PROJECT, COMMITTEE ON THE JUDICIARY

Mr. CLARKE. Mr. Chairman, I thank you for the opportunity to be here to discuss the procedure used in consideration of, and to some extent the content, of D.C. Act 4-69, the District of Columbia Sexual Assault Reform Act of 1981.

This act is the product of many years of work by the D.C. Law Revision Commission, both Houses of Congress, and the Council of the District of Columbia. It was the subject of more than 4 years of community debate and input prior to its passage.

Indeed, it is fair to say that D.C. Act 4-69 has been more extensively reviewed and publicly scrutinized than any other act passed by the Council since its inception.

It is an act which carries with it an extensive history of cooperation between the citizens of the District and their elected officials and between the Federal Government and the city.

I would like to outline for you today the history of the act and the process by which it was adopted by the Council and briefly explain the major provisions of the act.

The history of this legislation actually dates back to 1973, when the Congress granted the District home rule but withheld for a time certain authority to update changes to the criminal code. To assist the Congress in that respect and the Congress and Council in other respects, Congress created the District of Columbia Law Revision Commission in 1974 to identify defects and anachronisms in the code and make recommendations with respect thereto.

The Commission, which serves as an adviscry body, was carefully structured to strike a balance of Federal and local interests with 6 of its 15 members being appointed by Federal authorities, including two appointments from the Senate.

One area which was designated by Congress as having priority in the Commission's review process was the criminal law.

However, the review process was not actually begun until 1975, when the Commission first received partial funding. Over the next 2½ years the Commission diligently worked on developing a pro-

posal to revise the District's criminal laws, which had not been comprehensively reviewed or revised since 1901.

In 1977 the Commission delivered to Congress its tentative recommendations for a basic criminal code for the District of Columbia. Included in the tentative recommendations, which covered the basic common law crimes and sentencing, was a proposal to revise the District's sexual assault laws.

After the Commission received comments from sectors of the community and made amendments based upon these comments, the tentative proposal became the subject of a joint public hearing held by the Commission and the House Subcommittee on the Judiciary in 1977. Based upon the comments received during the hearings, the Commission again reviewed the proposal and in 1978 formulated its final recommendations.

At this time, Congress had exclusive authority over the D.C. criminal law, because the original 2-year ban on Council action, as contained in the Home Rule Act of 1973, had been extended for an additional 2 years.

As a result, the Commission's final proposal was transferred to Congress and became the subject of 6 days of public hearings before this subcommittee and the House Subcommittee on the Judiciary.

At the close of the hearings, joint recommendations were issued by the subcommittees, and the proposal was transmitted to the Council which received authority to legislate in the area of criminal law in 1979.

In transmitting the proposal to the Council, this subcommittee and the House Subcommittee on the Judiciary specifically noted:

> The present criminal law of the District of Columbia is an outdated relic of mosaic statutes, cases, and administrative interpretations passed into law, in a piecemeal fashion, over a period of time that stretches from 1901 to the present. Time has changed the social mores and standards by which we live today. The criminal laws of the District have not kept pace with the change. With the proposals made by the Law Revision Commission and the extensive hearings record and recommendations from the subcommittees, the City Council will stand in the unique position of being able to begin the modernization process without further delay.

The joint recommendations essentially recommended that the Council enact what is before you now. I am attaching as an appendix a copy of the letter I received transmitting those joint recommendations as well as the relevant portion of the recommendations and the relevant portion of the Law Revision Commission proposal.

In compliance with the congressional intent, the Council created the Criminal Code Project—I have its staff members with me today—which designated staff to assist in the committee's review of the criminal law, and the Law Revision Commission's proposal was introduced in bill form that same year.

In the beginning of 1980, the Committee on the Judiciary scheduled an unprecendented series of public hearings. Over 1,000 notices were sent to community organizations and concerned citizens. From January 1980 to April 1980, eight public hearings were held, one in each ward of the city.

Each hearing consisted of an afternoon session in which members of the community and government officials testified regarding specific parts of the proposal, and an evening session which was devoted to receiving comments on any aspect of criminal law reform

from the citizens of the particular ward where the hearing was being held.

During this set of hearings, more than 20 people commented specifically on the Commission's proposal to reform the sexual assault law, and one of the afternoon sessions was devoted to discussion of the topic.

Included among those who testified on this aspect of the proposal was the Corporation Counsel for the District of Columbia, representatives of the Metropolitan Police Department, division V of the United Bar of the District of Columbia, the D.C. Commission for Women, the Rape Crisis Center, the Women's Legal Defense Fund, the D.C. Federation of Business and Professional Women's Clubs, the Child Protection Center of Children's Hospital, and numerous concerned citizens and community organizations.

The testimony received at the hearings impressed upon the committee the need for reform of this area of the law. As a result, in its 1980 interim report on criminal law reform, the Committee on the Judiciary earmarked sexual assault as an area for immediate legislative action, and in February 1981 the D.C. Sexual Assault Reform Act was introduced.

While closely following the Commission's recommendations, this bill also reflected the extensive comments received from the Congress and from the community.

In March 1981 the bill again became the subject of two additional public hearings.

At this time, Mr. Chairman, I would like to have placed in the record, if I may, a copy of a notice which was sent to every elected advisory neighborhood commission member in the city, as well as the chairperson of every civic association and citizens association.

It includes the statement which was quoted by Mr. Frain but also includes summaries of the various bills which were part of the crime package. In the summary on the District of Columbia Sexual Assault Reform Act of 1981, all of the sections which are so controversial today are specifically noted. Thousands of those notices went out in the mail.

Senator MATHIAS. Without objection, a copy of the notice will be included in the record at this point.

[The material follows:]

COUNCIL OF THE DISTRICT OF COLUMBIA

WASHINGTON, D. C. 20004

INTRODUCTION OF A PACKAGE OF ANTI-CRIME LEGISLATION BY COUNCILMEMBER DAVE CLARKE

Co-Sponsors:

Wilhelmina J. Rolark
Polly Shackleton
Hilda H. Mason

February 9, 1981

COUNCIL OF THE DISTRICT OF COLUMBIA

WASHINGTON, D. C. 20004

STATEMENT OF COUNCILMEMBER DAVID A. CLARKE
UPON INTRODUCTION OF CRIME PACKAGE, FEBRUARY 10, 1981

I am announcing today, at the first regularly scheduled Council meeting of this Council Period, the introduction of a crime package of several bills. They include a comprehensive narcotic reform bill, a bill to overhaul the sexual assault laws, a bill to create a statute of limitations, a bill to provide certain immediate reforms to sentencing practices, my bail amendment bill introduced on February 5, and a forthcoming bill to overhaul our theft laws, aid law enforcement in the prosecution of fences, and provide the District with a white collar offenses law.

During the course of our eight hearings last year on the bill proposed by the Law Revision Commission, a theme developed from law enforcement officials and community alike. It was that criminal law reform ought to be addressed to areas where it is needed and not rewrite for the sake of rewriting. While there was near-unanimous opposition to the adoption of the Law Revision Commission proposal, some definite suggestions for reform were made. The United States Attorney suggested that attention first be given to the development of law in two areas where D.C. is now recognized to be very deficient. He cited those areas as the development of a comprehensive narcotics law and of a white collar crimes law. Additionally, the public spoke of a great concern with the bail laws and their administration and with the sexual assault laws.

COMPREHENSIVE NARCOTICS LAW

I agree with the United States Attorney that we need a comprehensive narcotics act. According to D.C. law, it is legal to possess opium poppies in our city. By D.C. law, it is merely a misdemeanor for adults to inject heroin in the veins of children. Our local law makes no distinction between that heinous conduct and the simple possession of prescription cough medicine by a person who does not have a prescription for it. Our city is totally dependent upon federal law and federal authorities to deal with serious narcotic activity.

The bill which I am introducing today will schedule all drugs according to the seriousness of the drug and the seriousness of the conduct. The penalties will range from misdemeanor penalties for possession of that cough medicine to felony penalties of up to 20 years for administration or distribution of heroin (or other Schedule I substances) to a juvenile. Similar legislation is in effect in forty-two states.

The bill would also ease the ability to add or delete drugs or move them from schedule to schedule by authorizing the Mayor to do so administratively, regulate the legitimate trade in drugs to prevent diversion to illicit channels, direct cooperation with federal drug enforcement authorities, and direct the creation of educational and other preventive programs.

15-821 O—83——5

A measure similar to this was passed by the Council during Council Period II, but was vetoed by Mayor Washington because of its inclusion of a part calling for criminal citations and collateral forfeitures rather than arrests and trials in the case of possession of small amounts of marijuana by adults for their own use. That provision became the primary focus of the media and the public. Far in excess of its importance to the entire bill, that one provision was highlighted to an inordinate degree. Although most of the press ultimately dropped the term "decriminalization" after it was pointed out that all possession of marijuana, no matter how small the amount, remained a crime, the damage was done. The public debate erroneously centered on the question of legalization, which had never been proposed.

I continue to consider that the issuance of criminal citations and forfeiture of criminal collateral for adults who possess small amounts of marijuana for their own use is a more effective means of providing some penalty where, in effect, none is now provided. However, I do not want to see the much-needed Uniform Controlled Substances bill destroyed because of attacks upon this one part. Furthermore, I am not sure a majority of my colleagues support such a measure. Accordingly, I am not introducing the marijuana provision at this time. I am keeping in my office a draft measure similar to the section that appeared in the previous bill with explicit clarifications as to its criminal nature and its application to adults only. The draft will remain available to my colleagues and, if and when a majority of them sign it, I will introduce it. In the meantime, I invite attention to the provisions of the Uniform Controlled Substances bill, which in my view are very important.

SEXUAL ASSAULT LAWS

I am also introducing the "District of Columbia Sexual Assault Reform Act of 1981" to modernize our laws in this area. It will create two grades of sexual assault. The first will include what is now charged as rape or forcible sodomy plus sexual acts forced by placing one in fear of kidnap or by drugging the victim without her or his knowledge. It will divide what is now known as statutory rape into two degrees: sex with an older child (consensual sex between a child between 12 and 16 and a defendant at least four years older) and sex with a younger child (consensual sex between a child under 12 and a defendant at least 13 years old). It will provide penalties for unlawful sexual acts with wards, inmates, or patients where the nature of the relationship is abused. And it will provide penalties for unlawful sexual contact using a similar grading. The doctrine of spousal immunity, whereby a spouse cannot charge the other with rape, will be abolished for first degree sexual assault.

STATUTE OF LIMITATIONS

A third bill amends the statute of limitations. Currently D.C. uses the federal law under which prosecution for first degree murder can be brought at any time and prosecutions for all other offenses must be brought within 5 years. My bill would permit prosecutions for first degree murder to be brought without time limitations, prosecutions for second degree murder to be brought within 10 years, prosecutions for other felonies to be brought within six years, and prosecutions for misdemeanors to be brought within three years.

PRELIMINARY SENTENCING IMPROVEMENTS

Testimony at the hearings regarding the Law Revision Commission proposal, again from both law enforcement officials and the community, suggested separation of legislation redefining crimes from legislation seeking to effect overall sentencing reform. We were advised to proceed with the former first. I am heeding that advice. At some time in the future, I will be introducing a comprehensive measure on sentencing. However, while that is developed, I am introducing a bill to put into law certain suggestions produced at those hearings. This bill would permit the Court to require restitution from the defendant to the victim, codify the Court's authority to order community service as part of its sentence, permit the Court to order sentences served at certain times (e.g. weekends), and permit the court to split a sentence between probation and incarceration which it cannot do now. I am particularly hopeful regarding the restitution provision. The concept is one of simple justice, that is, making the victim whole. It will cost the city far less than if the city were to restore the victim and is far less expensive than maintaining the defendant in an institution at the current rate of $50 per day. While obviously not appropriate for the more violent offenses, I consider it a good tool for sentencing in larcenous and some other property offenses.

BAIL AMENDMENT

On February 5, I introduced the District of Columbia Bail Amendment Act. In doing so, I noted the popular misconception that the District is subject to the liberal federal Bail Reform Act which it is not. It is subject to the D.C. Court Reorganization Act of 1970 which, unlike the Bail Reform Act, does permit the safety of the community to be taken into consideration in setting bond, and it contains what I am advised is the only pretrial detention statute in the country.

I patterned the bill on legislation considered in the Congress in 1977-1978. However, I noted that the existing pretrial law is the subject of a constitutional attack in the Court of Appeals and the Senate has recommended making the prosecutor's burden even harder to meet developing constitutional standards. While I did not include the Senate provision in my bill, it remains that the District now has a strong bail law and that there is not much further that we can go legislatively. It is an executive and judicial matter.

THEFT AND WHITE COLLAR CRIMES

I will be introducing a bill to rewrite the confusing matrix of theft laws. In that measure will be a consolidation section allowing what is now charged as larceny, embezzlement, or receiving stolen property to be charged simply as theft. Also included will be an aggregation section allowing the values of items stolen as part of a common plan to be combined for presecution as a felony rather than as several misdemeanors, and an aggravation section calling for one and a half times the normal penalty for thefts from senior citizens.

A special provision eases law enforcement's burden in building cases against professional fences, i.e., persons dealing in stolen property. Other provisions tighten the law for credit card fraud and shoplifting. The bill also rewrites the bribery and obstruction of justice laws while including a provision outlawing the acceptance of certain gratuities by public officials where no such provision now exists in the criminal code.

CONCLUSION

Recently, the issue of crime has become a matter of intense community concern and focus. The public is demanding that something be done, and many suggestions are being made. I am concerned that the intensity of our desire to provide some response may result in some unintended, over-reaching suggestions which may have the effect of adding to the community concern rather than lessening it.

The bills have all been drafted with care. They are based on careful examination of the relevant issues and the voluminous records from the several 1980 public hearings. The bills represent many hours of staff research and my personal review. They obviously were not put together overnight and, while responsive to public concerns, they are not reactionary in character.

There is within the collective family history in this city both the experience of being victimized and of having somebody charged with the commission of crime. The people of our city want strong, firm, but fair laws, and they want strong, firm, but fair administration of those laws. Together these bills meet those concerns. They constitute a reasonable and responsible legislative package for the Council to use as a basis for reviewing what can be done legislatively to address crime in the District. I urge my colleagues to join with me in these bills.

SUMMARY: DISTRICT OF COLUMBIA CRIMINAL STATUTE OF LIMITATIONS ACT OF 1981

This bill creates a local statute of limitations for the bringing of criminal actions. Under the bill, the following time limits would apply:

1. for murder in the first degree, no time limit;
2. for murder in the second degree, ten years;
3. for felony offenses in general, six years; and
4. for misdemeanors offenses in general, three years.

The bill also contains a special provision regarding offenses based upon official misconduct which permits prosecutions even after the general time limitations have expired provided the criminal action is brought within three years after the public official leaves office. Another special provision concerns offenses based upon fraud or breach of a fiduciary trust and permits actions to be brought after the expiration of the general time limitations provided the criminal action is brought within three years of the time the fraud or breach of trust is reasonably discovered. Each of these special provisions carries a nine-year statute of limitations for felonies and a six-year limitation for misdemeanors.

Currently, the District uses the federal statute of limitations of five years for any offense with no time limitation on criminal prosecutions for capital crimes.

SUMMARY: DISTRICT OF COLUMBIA SENTENCING IMPROVEMENTS ACT OF 1981

The District of Columbia Sentencing Improvements Act of 1981 is designed to effect some precise, but significant changes to the sentencing practices in the District of Columbia.

Major features of the bill will:

1. promote the use of restitution and community service in criminal cases;
2. enable the court to split a sentence between probation and incarceration, and allow the court to order a sentence served only on week-ends;
3. establish standard rules for the making and disclosure of presentence reports; and
4. require that the court advise aliens prior to the entry of a plea of guilty that such a plea may result in deportation or denial of naturalization.

SUMMARY: DISTRICT OF COLUMBIA CONTROLLED SUBSTANCES ACT OF 1981

This comprehensive legislation is designed to update the District's drug laws. Significant features of the bill:

1. repeal the Uniform Narcotic Drug Act and the Dangerous Drug Act of the District of Columbia;
2. classify drugs into schedules according to their dangerousness;
3. structure penalties according to the drug involved and the seriousness of the offender's conduct;
4. create an administrative system for scheduling new substances and rescheduling controlled substances;
5. strengthen the powers of law enforcement personnel to control violations of the drug laws; and
6. place more local controls over the legitimate drug industry.

SUMMARY: DISTRICT OF COLUMBIA SEXUAL ASSAULT REFORM ACT OF 1981

This bill is designed to reform and modernize the District's law on sexual assault offenses. Key provisions of the bill:

1. introduce a more orderly and reasonable classification of sexual assault offenses, and grade these offenses according to the seriousness of the prescribed conduct;
2. eliminate all gender-based references, so as to apply to sexual offenses committed by and against both men and women;
3. eliminate prohibitions against sexual activities between consenting adults in private;
4. provide special penalties for sexual assault offenses committed against children, wards, inmates and patients; and;
5. eliminate the current spousal exemption for the most serious types of sexual assaults, those committed by means of actual physical force, by threatening or placing another in reasonable fear of death, kidnap or bodily injury, or by impairing the ability of the victim to resist by administering an intoxicant for this purpose without the knowledge of or against the will of the victim.

SUMMARY: DISTRICT OF COLUMBIA BAIL REFORM ACT OF 1981

The District of Columbia Bail Reform Act of 1981 is designed to make the existing District of Columbia release and pretrial detention statutes a more effective tool for dealing with demonstrably dangerous criminal defendants. Major features of the bill:

1. change the references in the current law from "capital" offenses to "first degree murder" offenses, in light of the unenforceability, on constitutional grounds, of the District's current dealth penalty laws;

2. increase the maximum time period during which a person may be detained pursuant to the pretrial detention law from 60 days to 90 days, by permitting an additional 30-day detention period for good cause showing that the extension is needed for the purpose of preparing for trial;

3. increase the time for which a person arrested while on parole or probation may be temporarily detained from five to ten days;

4. amend the type of defendant eligible for the new ten-day hold period to include those charged with a crime of violence, a dangerous crime, or any crime if the person obstructs or attempts to obstruct justice by threatening, injuring or intimidating a prospective witness or juror.

SUMMARY: THEFT, FRAUD, BRIBERY, PERJURY AND RELATED OFFENSES ACT OF 198[illegible]

This bill is designed to redefine and strengthen the White Collar Crime laws of the District of Columbia. Major features of the bill include:

1. consolidation of the theft statutes, treating larceny, false pretenses, embezzlement, and receiving stolen property as theft;
2. an aggregation section allowing the values of items stolen as part of a common plan to be combined for prosecution as a felony rather than as several misdemeanors and an aggravation section calling for one and one-half times the normal penalty for thefts from senior citizens;
3. the creation of broad, general fraud statutes prohibiting schemes to defraud;
4. a redefinition of forgery and a new statute on forgery of objects;
5. a redefinition of bribery and creation of statutes prohibiting the taking or offering of unlawful gratuities and payoffs for past official behavior;
6. a new statute on trafficking in stolen property designed to severely penalize professional fencing operations;
7. a new shoplifting statute which clearly defines the rights of merchants and buyers in situations in which shoplifting is suspected;
8. a new commercial piracy law which prohibits thefts of recordings and other commercial property such as computer programs and formulas;

SUMMARY: THEFT, FRAUD, BRIBERY, PERJURY AND RELATED OFFENSES ACT OF 1981 (cont'd)

9. a redefinition of the extortion and blackmail statutes;
10. a redefinition of perjury which includes false statements made under penalty of perjury for official purposes;
11. amendment of the obstruction of justice statute; and
12. repeal of the current statutes on criminal libel, kisher meats and mislabeling of potatoes.

Senator MATHIAS. On what date did it go out?

Mr. CLARKE. They went out between February 9 and March 11. I do not have the specific date of the mailing. I can get it and supplement the record for you.

This is as it went out prior to the hearings. After the hearings, it was supplemented. An important page was added, which supplemented my comments at the hearing. This is as it went out prior to the hearings.

I stood before at least 50 organizations of this city and delivered copies of the document to them.

Senator MATHIAS. Let us make the record clear. This went to all the advisory neighborhood councils.

Mr. CLARKE. It went to every advisory neighborhood commissioner, not just to the Commission itself, but every commissioner and to the chairperson.

Senator MATHIAS. Individually?

Mr. CLARKE. Yes.

Senator MATHIAS. And to whom?

Mr. CLARKE. It went to the chairpersons of the civic associations and to the chairpersons of the citizen's associations, as they were listed on the lists which the respective federations put out. We listed those persons and mailed it to each of them.

Additionally, I appeared before the Federation of Civic Associations' executive committee meeting 1 or 2 days prior to the hearings and requested them to appear at the hearings. They declined.

At the 1981 hearings extensive comments were received from all sectors of the law enforcement community, including the U.S. attorney for the District of Columbia, as well as numerous organizations and individuals.

After incorporating many of the suggestions made during the hearings, the bill was unanimously reported by the Committee on the Judiciary.

Unfortunately, before reaching the full Council, the bill was assailed by the print media as being a teenage sexual rights bill. The reports concentrated on one section of the bill, the statutory rape provision, and misrepresented what that section of the bill actually did.

Because of the public misperception surrounding the proposal, the Council decided to delete the provision from the bill and substitute a gender-neutral version of the current statutory rape law. With these amendments completed, the Council adopted the bill on July 14, 1981. It was signed by the Mayor on July 21, 1981 and was duly transferred to the Congress to undergo this review period.

The major effect of the act is to expand and consolidate our present-day concepts of sexual assault. Specifically, the act is designed to better enable law enforcement to respond to cases of assault.

The act combines the offenses of rape and forcible sodomy into the offense of sexual assault in the first degree. In so doing, the protections of today's rape law are extended to males as well as females and may be applied to homosexual as well as heterosexual activity.

Sexual assault in the first degree differs from the current rape statute in that the fear of grave bodily injury or death is no longer a prerequisite. Rather, fear of significant bodily injury will suffice.

Whereas under the current law one must fear for her own safety, under the act fear of harm to a third person can be sufficient to sustain a prosecution.

Moreover, we have expanded the sexual assault concept to include taking advantage of a person by intoxicating that person without his or her knowledge. This is not the situation wherein two people may be drinking and one has too much. An example of what is prohibited by this new section is surreptitiously slipping a strong intoxicant into one's food or drink without the other's knowledge in order to take sexual advantage of that person.

Spousal immunity has been eliminated as a defense in cases of first degree sexual assault. The issue of when one's spouse should be immune from prosecution for acts committed upon his or her spouse was not an easy one. There were those who felt that the marriage contract granted no rights for sexual misuse and that spousal immunity should be eliminated in all cases. There were others who felt that the law had no role in the sexual conduct between a husband and a wife.

The Council concluded that first degree sexual assault involved matters of force and violence, which would be assaults in any case, while other prohibitions in the act involved forms of coercion. Accordingly, the Council removed spousal immunity as a defense to first degree cases but left it in the other cases.

In consolidating rape and forcible sodomy, we decreased the maximum penalty for rape and increased the maximum penalty for forcible sodomy. In the case of rape, this was done at the unanimous recommendation of the Law Revision Commission and the women's organizations appearing before us in order to increase the chances that prosecutors would prosecute and juries would convict in more cases. It should be remembered that, pursuant to District of Columbia Code, section 22–3202 (1973), the maximum penalty for armed rape will remain life imprisonment.

The act degenderizes statutory rape and thus extends the protections of the law to young males as well as females.

Finally, in what has been the most controversial part of this matter upon its return to Congress, the Council adopted most of the Commission's and subcommittee's recommendation to remove the antiquated criminal penalties still on the books regarding certain sexual conduct between consenting adults, which is engaged in privately or on a noncommercial, nonincestuous basis. I emphasize that the penalties would only be removed for conduct which meets all five tests: Adult, consensual, private, noncommercial, and nonincestuous.

I am aware of the greatly exaggerated claims being circulated that the bill would eliminate all prohibitions against homosexual conduct. To the contrary, the bill increases the penalty for forcible homosexual acts, expands the prostitution statute to prohibit homosexual as well as heterosexual prostitution—this is the only place in the bill where the word homosexual appears—and maintains the penalties for homosexual acts with children and public homosexual acts.

What is repealed is a section, District of Columbia Code section 23–3502, which prohibits certain defined sexual conduct. This prohibition is not limited to homosexual violation. It is capable of

being violated heterosexually as well as homosexually, and it may well be violated more often in a heterosexual manner, as its prohibitions are so broad as to proscribe conduct between married people in the privacy of their marriage. The rights of all adult citizens of whatever sexual orientation are affected by this section.

Finally, I would like to emphasize that we have not repealed every sanction of the law regarding these private, adult, consensual, noncommercial, nonincestuous matters. Adultery remains a standard in child custody and property distribution matters. Fornication is still relevant to paternity proceedings. No one on the Council is seeking to give official sanction to these activities. Rather, the Council has determined that within the framework of the local criminal justice system, sexual conduct—conduct which is private, consensual, and not commercial nor incestuous—should not be punished criminally.

Some moral values garner their strength from something other than the ability of the State to incarcerate their transgressors. This principle is a time-honored one, having its antecedents in Biblical times and scriptures. It is essentially the difference between saying something is wrong and encouraging social institutions to discourage it on the one hand and throwing stones at it on the other.

In conclusion, Mr. Chairman, this act is the product of an extended cooperation between the Congress and the city, having been proposed by a congressionally created commission, recommended by the relevant subcommittees, including this one, considered and passed by the Council, and sent to you.

I fully appreciate the pressure upon you. Indeed, I know it well, but I earnestly hope that the cooperation which characterized the genesis of the measure will continue through its culmination.

Senator MATHIAS. Thank you, Mr. Clarke. Without objection, the attachments to your testimony will be made a part of the record at this point.

[Attachments to Mr. Clarke's testimony follow:]

NINETY-FIFTH CONGRESS

CHARLES C. DIGGS, JR., MICH., CHAIRMAN

RONALD V. DELLUMS, CALIF.
WALTER E. FAUNTROY,
DELEGATE, DISTRICT OF COLUMBIA
JAMES R. MANN, S.C.
ROMANO L. MAZZOLI, KY.
HERBERT E. HARRIS II, VA.
DAN DANIEL, VA.
HELEN S. MEYNER, N.J.
CHARLES ROSE, N.C.
NORMAN E. D'AMOURS, N.H.
TED WEISS, N.Y.
DOUGLAS APPLEGATE, OHIO
CARDISS COLLINS, ILL.

STEWART B. MC KINNEY, CONN.
ROBERT W. DANIEL, JR., VA.
CHARLES W. WHALEN, JR., OHIO
E. THOMAS COLEMAN, MO.
MARC L. MARKS, PA.
NEWTON I. STEERS, JR., MD.

EDWARD C. SYLVESTER, JR., STAFF DIRECTOR
BARBARA C. WASHINGTON, MINORITY CHIEF COUNSEL

TELEPHONE: 225-4457

U.S. House of Representatives
Committee on the District of Columbia
ESTABLISHED BY JANUARY 1808
Room 1310, Longworth House Office Building
Washington, D.C. 20515

December 5, 1978

RECEIVED
DEC 14 1978
David Clarke
Councilmember Ward 1

Mr. David A. Clarke, Esquire
Chairman, Counsel on Judiciary
District of Columbia City Council
District Building
Washington, D. C. 20024

Dear Mr. Clarke:

The accompanying report contains the joint recommendations of the House District Subcommittee on Judiciary and the Senate Subcommittee on Governmental Efficiency and the District of Columbia regarding the Law Revision Commission's proposed Basic Criminal Code.

This joint report highlights the major deficiencies and problem areas in the Commission's code proposals, and suggests methods or alternatives for correcting them. In some instances, the report comments on certain minor or nonsubstantive technical problems which need to be addressed in order to make the LRC proposals a more workable and less ambiguous code.

Each Subcommittee has independently completed an extensive and thorough review and analysis of the hearings, statements, and proposals compiled as a result of Subcommittee considerations of the Commission's proposed Basic Criminal Code. The joint report sets forth recommendations, changes and amendments to the LRC proposals which both Subcommittees have identified as being in need of revision. There are numerous other issues on which the Subcommittees will comment separately at a later date.

The revision of the District of Columbia Criminal Code has been a tedious and careful process and has resulted in a voluminous and detailed work product by the Law Revision Commission and the House and Senate Subcommittees. Their combined efforts have culminated in a comprehensive and modern set of criminal laws for the District of Columbia.

The present criminal law of the District of Columbia is an outdated relic of mosaic statutes, cases, and administrative interpretations passed into law, in a piecemeal fashion, over a period of time that stretches from 1901 to the present. Time has changed the social mores and standards by which we live today. The criminal laws of the District have not kept pace with that change. With the

15-821 O—83——6

proposals made by the Law Revision Commission and the extensive hearings record and recommendations from the Subcommittees, the City Council will stand in the unique position of being able to begin the modernization process without further delay.

In the spirit of Home Rule, we are delighted to begin the process of transferring jurisdiction of the proposed criminal code to the City Council so that they can complete the task of codification by adding the essential ingredient of their knowledge of the District of Columbia. We look forward to continued oversight, communication and exchange between Congress and the Council relative to the code, and to rapid progress towards completion of the task that we have begun.

Respectfully submitted,

RONALD L. MAZZOLI, Chairman
House Subcommittee on Judiciary

THOMAS F. EAGLETON, Chairman
Senate Subcommittee on
Governmental Efficiency

JOINT RECOMMENDATIONS

OF THE

HOUSE DISTRICT SUBCOMMITTEE ON JUDICIARY

AND THE

SENATE SUBCOMMITTEE ON GOVERNMENTAL EFFICIENCY AND THE DISTRICT OF COLUMBIA

ON THE

DISTRICT OF COLUMBIA BASIC CRIMINAL CODE

AS PROPOSED BY THE

DISTRICT OF COLUMBIA LAW REVISION COMMISSION

DECEMBER 5, 1978

CHAPTER 6 - SEXUAL ASSAULT OFFENSES

Section 22-603 - Unlawful Sexual Act with a Younger Child

This section would make it an offense for a person 13 years of age or older to recklessly engage in a sexual act with a person less than 11 years old and not the spouse of the actor. Under this proposal, a person 11 years of age or older could lawfully consent to a sexual act.

Many witnesses who testified on this provision advocated that this reduction in the age of consent was unjustified and excessive since this provision would have the effect of lowering the age of victims in statutory rape cases from 15 years or younger (under present law) to less than 11 years of age.

See the testimony of Chief of Police Burtell Jefferson, Capitol Hill Restoration Society, Division V of the District of Columbia Bar, and U.S. Attorney Earl Silbert.

Suggested Changes

Both Subcommittees make the following recommendation: Substitute 12 years for 11 years as the age of consent. Also increase from 13 to 14 years of age the required minimum age of the offender. This would serve to achieve the Commission's intent of not wishing to impose severe criminal penalties for sexual experimentation which may occur among young children of approximately the same age.

Section 22-619 - Admissibility and Sufficiency of Evidence in Prosecution Under this Chapter

This section was included in the basic code to deal with the extraordinary rules of evidence that have been developed over time in cases involving sexual assault. The clear trend in Federal and State criminal law is to apply the normal standards of admissibility and sufficiency of evidence in such cases. The traditional requirements of corroboration and a prompt complaint have been eliminated

in most modern codes, and would be removed under the Commission's proposal. The Subcommittees agree that the normal rules of evidence and the "reasonable doubt" standard provide ample protection to the accused sex offender from false accusations.

The last two sentences of Section 22-619, however, present a problem. They provide rules for the admissibility of evidence pertaining to the sexual reputation of the victim in sexual assault cases. The Commission explains in its commentary that it intended to follow and codify current District of Columbia case law in this area. Under the recent District of Columbia Court of Appeals decision in McLean v. United States, 377A. 2d 74 (D.C. Ct. of Apls. 1977), evidence of a victim's prior sexual conduct and reputation for sexual chastity is inadmissible in all but a very few situations. The exceptions are limited to cases where the defense claims that the victim consented to an act of prostitution or the prosecutor raises the issues of the victim's loss of virginity or the origin of semen. The Commission's proposal is not consistent with the McLean case. It can be construed as making evidence of sexual reputation and past conduct more admissible by giving the judge discretion where he finds that its probative value outweighs its inflammatory or prejudicial nature.

Suggested Changes

The Subcommittees recommend that the District Council reject the Commission's proposed evidentiary standard for sexual reputation and past sexual conduct. They further recommend that the rules established by the Court of Appeals in the McLean opinion govern cases brought under Chapter 6.

The Subcommittees differ as to the method of implementing the McLean standards.

The Senate Subcommittee suggests that the Council not attempt to codify the evidentiary law in this area. The current rules established in the McLean case are clear and straight-forward.

ADDITIONAL RECOMMENDATIONS

OF THE

HOUSE DISTRICT SUBCOMMITTEE ON JUDICIARY

ON THE

DISTRICT OF COLUMBIA BASIC CRIMINAL CODE

AS PROPOSED BY THE

DISTRICT OF COLUMBIA LAW REVISION COMMISSION

DECEMBER 5, 1978

CHAPTER 6 - SEXUAL ASSAULT OFFENSES

Section 22-601 - Sexual Assault in the First Degree

Under this provision, a person would be guilty of first degree assault if that person knowingly compelled another person to participate in or submit to a sexual act through the use of physical force; threatening any person with death, bodily injury, or abduction; or substantial impairment of the victim's ability to appraise or control his or her conduct (e.g. through intoxicants, hypnosis, or similar means). This offense is graded as a Class B Felony (8-11 years imprisonment).

Suggested Changes

1. Sub-Section (a) requires that the person "knowingly" compels another to participate in or submit to a sexual act. Several witnesses indicated that this state of mind requirement represented significant and unjustified change from current law and would allow intoxication to be raised as a defense to a charge of rape. U.S. Attorney Earl J. Silbert noted in regard to this section that:

> "The Commission's proposal governing forcible sexual assault (601(a)(1) and (2)) is highly objectionable because it requires a "knowing" state of mind with respect to both conduct and result. This constitutes a significant and completely unjustified change from existing law under which rape is only a general intent crime and intoxication is not a defense. Under long established D. C. law, the government need not prove that the defendant knew the victim was raped or that he specifically intended to rape her. See, e.g., United States v. Thornton, 162 U.S. App. D.C. 207, 498 F.2d 749 (1974) and cases cited therein. Persons committing forcible rape or sodomy should not be absolved from criminal liability merely because they are intoxicated at the time of the act. S. 1437 appropriately retains existing law. Sec. 1641. So should the Commission."

See also the comments of Division V of the District of Columbia Bar.

Recommendation: Delete the term "knowingly" from this section.

2. Sub-Section (a)(3) provides that it is an offense if a person compels another to engage in a sexual act by "...substantially impairing the ability of the victim

to appraise or control the victim's conduct by administering or employing a drug, an intoxicant, hypnosis, or other similar means, without the knowledge of or against the will of the victim."

This particular subsection is ambiguous because it is unclear whether the prosecution must prove that the victim did not know that he or she was being "substantially impaired" or merely that the victim did not know that a drug or other intoxicant was being administered. Furthermore, it is unclear whether this subsection requires proof that the administration of intoxicants was done with the "conscious purpose" to accomplish the sexual act.

These ambiguities could result in the prosecution of an individual for sexual assault in the first degree if that individual merely offers to another person alcoholic beverages and subsequently takes advantage of the situation (presumably a state of intoxication) by engaging in a sexual act.

Recommendation: This subsection should be rewritten to establish a specific intent requirement similar to Section 1641(a)(2) of Senate bill, S. 1437, which would revise the federal criminal code:

> "(a) has, with intent to engage in a sexual act, substantially impaired the ability of the other person to appraise or control conduct by administering or employing a substance that (the actor) knows is a drug or intoxicant, or by other means, without the knowledge or against the will of the other person."

See the testimony of U.S. Attorney Earl Silbert and Division V of the District of Columbia Bar.

JAN 18 1979

ADDITIONAL RECOMMENDATIONS

OF THE

SENATE SUBCOMMITTEE ON GOVERNMENTAL EFFICIENCY
AND THE DISTRICT OF COLUMBIA

ON THE

DISTRICT OF COLUMBIA BASIC CRIMINAL CODE

AS PROPOSED BY THE

DISTRICT OF COLUMBIA LAW REVISION COMMISSION

The distinction between those concepts and the concept of "intentional" causation has been blurred. Juries understand "intentionality," and case law should develop in a more consistent manner if that construction is used. These arguments outweigh the largely hypothetical possibility that less guilty conduct might be punished with a higher sentence under the revised language.

Suggested Action:

The Subcommittee recommends that the Council accept the Commission proposal and enact Section 22-301(a)(1) as drafted.

CHAPTER 6 - SEXUAL ASSAULT OFFENSES

Section 22-601 - Sexual Assault in the First Degree

The definition of first degree sexual assault contains a "knowing" state of mind for culpability. Thus, if an actor either knowingly or intentionally compels another by force to engage in a sexual act, the actor is guilty of what is traditionally called rape. A major problem with this section is that, under the Code's definition of states of mind in Section 22-105(c), self-induced intoxication negates a finding that the actor had a knowing or intentional state of mind at the time of the act. Thus, intoxication would be a defense to a rape prosecution. This is contrary to current law and the Subcommittee recommends that the Council

make the amendments necessary to correct the defect.

The Law Revision Commission has, in fact, recognized this problem, and in their current draft Chapter 19, Bars and Defenses, the defense of self-induced intoxication is precluded in first degree sexual assault prosecutions.

Suggested Action:

The Subcommittee recommends precluding the defense of self-induced intoxication in first degree sexual assault cases.

Section 22-602(a)(1) - Sexual Assault in the Second Degree

Under this provision, a person who engages in a sexual act with another person, knowing that other person to be "incapable of understanding the nature of the conduct," would be guilty of a Class C felony. This subsection was drafted by the Commission to protect the mentally deficient from unscrupulous persons of normal intelligence. The Commentary indicates that this is the narrowest possible language that would accomplish that goal.

Despite the efforts of the Commission to come up with a formulation that is not overly broad, Section 22-602(a)(1),

as drafted, presents a difficult problem. In trying to protect persons with subnormal intelligence from sexual exploitation, the section has the effect of deeming the mentally retarded to be legally incapable of enjoying sex with a non-retarded person. It also subjects the defendant to a post facto determination by a prosecutor or jury that a certain sexual encounter was a type not acceptable by society.

The Commentary indicates that prosecutorial discretion will be a sufficient protection from the unjust application of this offense. Opponents argue that this makes the prosecutor the "third party in bed," second-guessing the motives of the defendant and the rights of the mentally deficient.

The Subcommittee believes that most situations of sexual abuse of the retarded should be covered by Section 22-607, which deals with abuse of patients by institution officials. If it is impossible not to draft a criminal statute such as Section 22-602(a)(1) too broadly, it should not be enacted. The Subcommittee would support any alternative construction that allowed for the sexual rights of retarded persons and was narrow enough to avoid relying entirely on prosecutorial discretion.

Suggested Action:

The Subcommittee recommends investigating alternative language for Section 22-602(a)(1).

Another possibility, that was considered and rejected by the Commission, is to make available an affirmative defense of "good intentions" in such cases. The Commission felt that such a defense would always be raised and would negate any effectiveness that the provision might have. The Subcommittee, however, believes that it may be the best method to deal with the problem of over-breadth in the language of the section. Thus, it is suggested that the Council take a fresh look at that defense.

Section 22-604 - Unlawful Sexual Activity with an Older Child

The Joint Report of this Subcommittee and the House D. C. Subcommittee on the Judiciary contains a recommendation to amend Section 22-603, Unlawful Sexual Act with a Younger Child. The Subcommittees suggest that the "age of consent" be raised from 11 years to 12 years of age, believing that all children under 12 years old require the protection that the section offers.

That suggested change will also require a conforming amendment to the age level specified in Section 22-604(a)(1) dealing with older children.

Suggested Change

The Subcommittee recommends that, if the amendment suggested for 22-603 is adopted, Section 22-604(a)(1) be

changed to read as follows:

(1) the victim is in fact 12 years of age but less than 15 years of age and is not the spouse of the actor; and."

CHAPTER 8 - BURGLARY AND CRIMINAL TRESPASS OFFENSES

Section 22-801(b) - Burglary

Section 22-801(b) contains a limitation on sentencing where a defendant is convicted for burglary, a Class C felony (guideline imprisonment of 4 1/2 to 7 years), and also for a misdemeanor or infraction committed after illegal entry of the building. In such cases, the Commission proposes that sentences for the crimes run concurrently. Thus, if theft is the object of the burglary, and the burglar steals less than $500 (a Class B misdemeanor), there will be no additional imprisonment beyond that which is imposed for the burglary.

The Commission's reasoning for the limitation is sound. A person should be convicted for burglary and the underlying offense. A felony is too serious to be subsumed in the burglary statute for sentencing purposes and it should be punished separately. But when the crime for which the illegal entry was made is a misdemeanor or infraction, the stiffer sentencing guidelines for burglary will serve to escalate the punishment significantly without the need for concurrent sentences.

[EXCERPTS]

PROPOSED DISTRICT OF COLUMBIA BASIC CRIMINAL CODE AND COMMENTARY *

* * * * * * *

Chapter 6.—SEXUAL ASSAULT OFFENSES

Chap. 6. Sexual Assault Offenses.
Sec. 22–601. Sexual Assault in the First Degree.
Sec. 22–602. Sexual Assault in the Second Degree.
Sec. 22–603. Unlawful Sexual Act with a Younger Child.
Sec. 22–604. Unlawful Sexual Act with an Older Child.
Sec. 22–605. Unlawful Sexual Act with a Ward.
Sec. 22–606. Unlawful Sexual Act with an Inmate or Patient.
Sec. 22–610. Unlawful Sexual Contact.
Sec. 22–619. Admissibility and Sufficiency of Evidence in Prosecutions under this Chapter.
Sec. 22–620. Definitions for Chapter 6.

Sec. 22–601. Sexual assault in the first degree.

(a) OFFENSE.—A person is guilty of sexual assault in the first degree if that person knowingly compels another person to participate in or submit to a sexual act by—

(1) actual physical force; or

(2) threatening or placing the victim in reasonable fear, that any person will be subjected imminently to death, bodily injury, or abduction; or

(3) substantially impairing the ability of the victim to appraise or control the victim's conduct by administering or employing a drug, an intoxicant, hypnosis, or other similar means, without the knowledge of or against the will of the victim.

(b) GRADING.—Sexual assault in the first degree is a Class B felony.

Sec. 22–602. Sexual assault in the second degree.

(a) OFFENSE.—A person is guilty of sexual assault in the second degree if that person (recklessly) engages in a sexual act with another person, not the spouse of the actor, knowing that the other person is—

(1) incapable of understanding the nature of the conduct; or

(2) physically incapable of resisting, or of withholding consent to, the sexual act; or

(3) unaware that a sexual act is being committed.

(b) GRADING.—Sexual assault in the second degree is a Class C felony.

---

* A committee report prepared by the District of Columbia Law Revision Council for the Subcommittee on Governmental Efficiency and the District of Columbia, Committee on Governmental Affairs, April 1978.

Sec. 22–603. Unlawful sexual act with a younger child.

(a) OFFENSE.—A person is guilty of an unlawful sexual act with a younger child if that person (recklessly) engages in a sexual act with another person and if—

(1) the victim is in fact less than 11 years of age and is not the spouse of the actor; and

(2) the actor is in fact 13 years of age or older.

(b) GRADING—Unlawful sexual act with a younger child is a Class C felony.

Sec. 22–604. Unlawful sexual act with an older child.

(a) OFFENSE.—A person is guilty of an unlawful sexual act with an older child if that person (recklessly) engages in a sexual act with another person and if—

(1) the victim is in fact at least 11 years of age but less than 15 years of age and is not the spouse of the actor; and

(2) the actor is in fact at least five years older than the victim.

(b) AFFIRMATIVE DEFENSE.—It is an affirmative defense to a prosecution under this section that the defendant reasonably believed that the victim had attained the critical age.

(c) GRADING.—Unlawful sexual act with an older child is a Class D felony.

Sec. 22–605. Unlawful sexual act with a ward.

(a) OFFENSE.—A person is guilty of an unlawful sexual act with a ward if that person (recklessly) engages in a sexual act with another person and if—

(1) the victim is in fact less than 18 years of age and is not the spouse of the actor; and

(2) the actor is a custodian, guardian, or parent of the victim.

(b) DEFINITIONS.—As used in this section:

(1) The term "custodian" includes, but is not limited to, any person who lives in the same household as, and has some supervisory control over, a person who is less than 18 years of age.

(2) The term "guardian" includes, but is not limited to, a legally appointed guardian, a natural guardian, or a guardian in fact.

(3) The term "parent" includes, but is not limited to, a natural parent, an adoptive parent, or a stepparent.

(c) GRADING.—Unlawful sexual act with a ward is Class F felony.

Sec. 22–606. Unlawful sexual act with an inmate or patient.

(a) OFFENSE.—A person is guilty of an unlawful sexual act with an inmate or patient if that person (recklessly) engages in a sexual act with an inmate or patient, or causes a sexual act to be engaged in between an inmate or patient and a third person, and if—

(1) the victim is an inmate or patient in a prison, hospital, or other institution and is not the spouse of the actor or of the third person; and

(2) the actor has supervisory or disciplinary authority over, or care, custody, or control functions with respect to, the victim, and the actor takes advantage of this authority or these functions to engage in or cause such act.

(b) GRADING.—Unlawful sexual act with an inmate or patient is a Class E felony.

Sec. 22–610. Unlawful sexual contact.

(a) OFFENSE.—A person is guilty of unlawful sexual contact if that person commits a sexual contact with another person under circumstances that would constitute an offense under section 22-601, 22–602, 22–603, 22–604, 22–605, or 22–606 if such contact involved a sexual act.

(b) GRADING.—

(1) Unlawful sexual contact is a Class D felony if the sexual contact is committed under the circumstances described in section 22–601 (Sexual Assault in the First Degree).

(2) Unlawful sexual contact is a Class F felony if the sexual contact is committed under the circumstances described in section 22–602 (Sexual Assault in the Second Degree).

(3) Unlawful sexual contact is a Class D felony if the sexual contact is committed under the circumstances described in section 22–603 (Unlawful Sexual Act with a Younger Child).

(4) Unlawful sexual contact is a Class E felony if the sexual contact is committed under the circumstances described in section 22–604 (Unlawful Sexual Act with an Older Child).

(5) Unlawful sexual contact is a Class A misdemeanor if the sexual contact is committed under the circumstances described in section 22–605 (Unlawful Sexual Act with a Ward).

(6) Unlawful sexual contact is a Class A misdemeanor if the sexual contact is committed under the circumstances described in section 22–606 (Unlawful Sexual Act with an Inmate or Patient).

Sec. 22–619. Admissibility and sufficiency of evidence in prosecutions under this chapter.

Determination of the admissibility and sufficiency of evidence in prosecutions under this chapter shall be made in accordance with the usual rules of evidence. No special rules of admissibility or of sufficiency of evidence shall apply because of the nature of the case. If the defendant, in a prosecution under this chapter, proposes to offer evidence concerning the sexual reputation of the victim or the past sexual conduct of the victim with the defendant or with persons other than the defendant, the defendant shall make an offer of proof in private out of the presence of the jury and spectators before seeking to introduce or refer to such evidence in court. The judge shall conduct a hearing thereon in private out of the presence of the jury and spectators and, after weighing the inflammatory or prejudicial nature of the proposed evidence as against its probative value, shall determine whether and to what extent the proposed evidence is admissible.

Sec. 22–620. Definitions for chapter 6.

As used in this chapter, the following terms shall have the following meanings:

(1) The term "sexual act" means conduct consisting of contact (A) between the penis and the vulva, anus, or mouth; or (B) between the mouth and the vulva or anus; or (C) between an artificial sexual organ, or other object or instrument employed in the manner of an artificial sexual organ, and the anus or vulva. For purposes of this definition—

(i) contact involving the penis, artificial sexual organ, or object or instrument occurs upon penetration, however slight; and

(ii) emission of semen is not required.

(2) The term "sexual contact" includes touching a person's intimate parts, whether directly or through clothing, for the purpose of arousing or gratifying the sexual desires of any person. The term "intimate parts" includes the primary genital area, the groin, the inner thigh, the anus, the buttock, or the breast.

(3) The term "spouse" means a person with whom the actor is living as husband or wife, regardless of the legal status of the relationship, and does not include a husband or wife living apart under judicial decree of separation or written separation agreement.

* * * * * * *

REPEALS

SEC. 3. The statutes listed in this section, all of which are presently compiled in Title 22 of the District of Columbia Code, are repealed. All other statutes presently compiled in that title shall be editorially transferred to one or more other or additional titles of the District of Columbia Code:

(1) Chapter 854, Act of March 3, 1901, sections 904 and 905 (D.C. Code 22–101, 22–102), relating to definitions.

(2) Chapter 854, Act of March 3, 1901, section 906 (D.C. Code 22–103), relating to attempts.

(3) Chapter 854, Act of March 3, 1901, sections 907 and 907A, as amended (D.C. Code 22–104), relating to prior convictions.

(4) Chapter 854, Act of March 3, 1901, section 908 (D.C. Code 22–105), relating to aiding or abetting.

(5) Chapter 854, Act of March 3, 1901, section 908A, as amended (D.C. Code 22–105a), relating to conspiracy.

(6) Chapter 854, Act of March 3, 1901, section 910 (D.C. Code 22–107), relating to common law offenses.

(7) Chapter 854, Act of March 3, 1901, section 874 (D.C. Code 22–301), relating to adultery.

(8) Chapter 854, Act of March 3, 1901, sections 820, 821, 848, and 822, as amended (D.C. Code 22–401, 22–402, 22–403, 22–404), relating to arson and burning.

(9) Chapter 854, Act of March 3, 1901, sections 803, 804, 805, 806, and 807; chapter 235, Act of July 16, 1912, section 2, as amended; and 9 Ann., chapter 14, section 8 (D.C. Code 22–501, 22–502, 22–503, 22–504, 22–506, 22–507, 22–508), relating to assault, mayhem, and threats.

(10) Section 3 of chapter 106 of the Act of August 23, 1871 (D.C. Code 22–803), relating to the transportation of animals by railroad companies.

(11) Section 214 of the Act of June 29, 1953 (D.C. Code 22–1002), relating to fornication.

(12) Section 1 of the Act of July 16, 1912 (D.C. Code 22–1101), relating to affrays.

(13) Sections 852, 853, and 854 of the Act of March 3, 1901 (D.C. Code 22–1102, 22–1103, 22–1104), relating to dueling and challenges to fight a duel.

(14) Section 17 of the Act of July 29, 1892 (D.C. Code 22–1108), relating to playing games in streets.

(15) Section 3 of the Act of July 29, 1892 (D.C. Code 22–1109), relating to throwing stones.

(16) Section 14 of the Act of July 29, 1892 (D.C. Code 22–1113), relating to kindling bonfires.

(17) Section 4 of the Act of July 29, 1892 (D.C. Code 22–1117), relating to fire balloons or parachutes.

(18) Section 16 of the Act of July 29, 1892 (D.C. Code 22–1118), relating to driving or leading any horse, mule, or other animal on Federal grounds.

(19) Sections 833, 834, 835, 836, 837, 838, and 851a of the Act of March 3, 1901 (D.C. Code 22–1201, 22–1202, 22–1203, 22–1204, 22–1205, 22–1206, 22–1207), relating to embezzlement.

(20) Chapter 19 of the Act of March 21, 1892 (D.C. Code 22–1208), relating to conversion by commission merchants and other such persons.

(21) Sections 839 and 841 of the Act of March 3, 1901 (D.C. Code 22–1209, 22–1210), relating to embezzlement.

(22) Section 842 of the Act of March 21, 1901 (D.C. Code 22–1301), relating to false pretenses.

(23) Section 845a of the Act of June 30, 1902 (D.C. Code 22–1302), relating to recording with intent to extort money.

(24) Section 843 of the Act of March 3, 1901 (D.C. Code 22–1401), relating to forgery.

(25) Sections 830a and 840 of the Act of March 3, 1901 (D.C. Code 22–1404, 22–1405), relating to conversion of assets of decedents' estates and the [illegible] away or concealing of writings.

(26) Sections 1, 2, and 3 of the Act of April 16, 1937 (D.C. Code 22–1407, 22–1408, and 22–1409), relating to slugs.

(27) Chapter 273 of the Act of July 1, 1922 (D.C. Code 22–1410), relating to making or uttering a bad check.

(28) Section 823 of the Act of March 3, 1901 (D.C. Code 22–1801), relating to burglary.

(29) Section 875 of the Act of March 3, 1901 (D.C. Code 22–1901), relating to incest.

(30) Section 812 of the Act of March 3, 1901 (D.C. Code 22–2101), relating to kidnaping.

(31) Sections 826, 827, and 828 of the Act of March 3, 1901 (D.C. Code 22–2201, 22–2202, 22–2203), relating to larceny.

(32) Section 826b of the Act of March 3, 1901 (D.C. Code 22–2204), relating to unauthorized use of vehicles and failure to return a rented vehicle.

(33) Section 826c of the Act of March 3, 1901 (D.C. Code 22–2204a), relating to theft from vehicles.

(34) Section 829 of the Act of March 3, 1901 (D.C. Code 22–2205), relating to receiving stolen goods.

(35) Sections 831 and 832 of the Act of March 3, 1901 (D.C. Code 22–2206, 22–2207), relating to stealing property of, and receiving property stolen from, the District of Columbia.

(36) Section 828 of the Act of March 3, 1901 (D.C. Code 22–2208), relating to destroying stolen property.

(37) Sections 815, 816, and 817 of the Act of March 3, 1901 (D.C. Code 22–2301, 22–2302, 22–2303), relating to libel.

(38) Section 818 of the Act of March 3, 1901 (D.C. Code 22–2304), relating to false charges of unchastity.

(39) Section 819 of the Act of March 3, 1901 and section 1501 of title X of the Act of June 19, 1968 (D.C. Code 22–2305, 22–2306), relating to blackmail and extortion.

(40) Section 1502 of title X of the Act of June 19, 1968 (D.C. Code 22–2307), relating to threats.

(41) Sections 798, 799, 800, and 801 of the Act of March 3, 1901 (D.C. Code 22–2401, 22–2402, 22–2403, 22–2404), relating to murder.

(42) Section 802 of the Act of March 3, 1901 (D.C. Code 22–2405), relating to manslaughter.

(43) Section 2 of the Act of June 25, 1910 (D.C. Code 22–2706), relating to detaining a female against her will.

(44) Section 808 of the Act of March 3, 1901 (D.C. Code 22–2801), relating to rape.

(45) Sections 810 and 811 of the Act of March 3, 1901 (D.C. Code 22–2901, 22–2902), relating to robbery.

(46) Sections 873 and 871 of the the Act of March 3, 1901 (D.C. Code 22–3001, 22–3002), relating to seduction.

(47) Sections 851 and 824 of the Act of March 3, 1901 (D.C. Code 22–3101, 22–3102), relating to unlawful entry.

(48) Section 891 of the Act of March 3, 1901 (D.C. Code 22–3103), relating to grave robbery.

(49) Sections 825, 825a, 849, 847, and 880 of the Act of March 3, 1901; sections 13, 15, and 1 of the Act of July 29, 1892 (D.C. Code 22–3104, 22–3105, 22–3106, 22–3108, 22–3109, 22–3110, 22–3111, 22–3112), relating to damaging of property.

(50) Section 2 of the Act of July 29, 1892; section 850 of the Act of March 3, 1901; and section 826a of the Act of June 30,

* * * * * * *

Senator MATHIAS. You have referred, Mr. Clarke, to the recommendations of the Law Revision Commission. The Commission was composed of a number of distinguished lawyers in the District of Columbia.

Have you made a comparative list of the recommendations of the Commission and the action taken by the Council? In other words, how closely did the Council's action track the recommendations of the Commission?

Mr. CLARKE. They tracked them fairly closely, Mr. Chairman. We did not go into the questions of evidence or the production of evidence in court cases, because we felt it raised a legal issue which might endanger the bill.

We had previously adopted a bill, some time ago, which amended the Shop Book Rule as part of the District of Columbia's law on evidence. The President then sustained a mayoral veto of the bill on the theory that we did not have the ability to enact laws pertaining to evidence where they amounted to rules of procedure.

Therefore, we did not want to get into that issue and took it out.

Second, the Law Revision Commission recommended an age-differential approach to the question of statutory rape. That was originally in the bill. It was taken out after it was reported in the media as legalization of teenage sex. There developed a hue and cry which was sufficient such that we felt the remainder of the bill ought to go forward, and we would deal with that issue at a later time.

The third place where we differed from the Law Revision Commission's proposal is this. It recommended the decriminalization of incest between adults which was undertaken in a private manner and was consensual and noncommercial. We did not accept their recommendation. Incest is one of things which will remain a violation of the law under any circumstance.

Senator MATHIAS. One of the claims which has been made is that the repeal of the sodomy statute, section 22–3502, will legalize bestiality.

Mr. CLARKE. I do not think so, sir. We have not changed at all the cruelty-to-animals section of the law, and any such conduct would certainly be punishable under that section.

Senator MATHIAS. Testimony was given this morning to the effect that the repeal of section 22–3502 would make it impossible to reach conduct such as that of former Representative Hinson. Is that your opinion?

Mr. CLARKE. No, sir. Public indecent acts would continue to be a violation of D.C. Code 22–1112. Although Congressman Hinson was originally charged with a violation of 22–3502, there remain other prohibitions upon the books which we believe to have been strengthened by this act. They would cover his conduct.

That is, they would be covered under the circumstances under which he was said to have engaged in them.

Senator MATHIAS. Is this your personal opinion, or have you consulted the corporation counsel or the U.S. attorney?

Mr. CLARKE. We have consulted with both offices, Mr. Chairman. Section 1112 is prosecuted by the Office of the Corporation Counsel, so that the U.S. attorney deferred to them with respect to the matter.

We have consulted with the chief of the criminal division of the Office of Corporation Counsel. It is his opinion that section 1112 is strong enough to sustain a prosecution for the conduct which Congressman Hinson was alleged to have committed.

Senator MATHIAS. Were you in the room when we had a discussion on whether or not homosexual prostitution was or was not covered by the previous law?

Mr. CLARKE. Currently, homosexual prostitution is prosecuted under a terribly vague law which the courts have had to go to some lengths to sustain. It is a prohibition of solicitation for "lewd and immoral purposes."

By strengthening the prostitution section itself to specifically include homosexual prostitution, we will clarify and strengthen the law.

There is an additional measure which will soon——

Senator MATHIAS. You mean, by explicitly making homosexual——

Mr. CLARKE. That is right. It will explicitly make homosexual acts of prostitution a violation.

Let me indicate that there is forthcoming to you another measure. It has already been passed by the Council. It will define prostitution as "acts and contacts," as described by this law. Therefore, the conduct will not have to achieve the level of penetration to be prostitution. For instance, commercial masturbation would be prohibited under the prostitution section in a combination of this law and the one which is forthcoming to you.

Senator MATHIAS. What about statutory rape?

Mr. CLARKE. Under the proposal as it stands before you, sir, it would be an offense punishable by 20 years imprisonment for any person to have sex with any person under the age of 16.

This will apply to persons who are above the age of 16, as I think it should. I think that is an improvement, because young males will be protected.

It will also apply to persons who are of the same age under the age of 16. Both will be guilty of raping each other.

Senator MATHIAS. The Mayor, in his testimony, raised a question about inmates in prison. That is an especially serious problem, because in almost every part of this country prisons are overcrowded. Cells designed for one prisoner have two and in some cases three inmates.

What was the previous law as far as prisoners were concerned?

Mr. CLARKE. Previously, the case would be prosecuted as a case of forcible sodomy with a maximum penalty of 10 years. Under the act, the case may be prosecuted as first degree sexual assault with a maximum penalty of 20 years.

Senator MATHIAS. In that case, the bill strengthens.

Mr. CLARKE. In that case, the bill strengthens. Yes, sir.

Senator MATHIAS. Have you had occasion to compare the D.C. bill with statutes covering a similar subject matter in other States?

Mr. CLARKE. We have had the occasion to examine the bill as to the parts which were alleged to be deficient.

In the case of the statutory rape section, our original proposal was consistent with the law of 34 States. Today, the statutory rape section will stand as one of its kind in the Nation. We will be the

only State in the country—or jurisdiction in the country—prosecuting as rape consensual conduct between two youths.

That is, we will be the only ones prosecuting both of them for it.

Forty States in the country are without fornication laws. Twenty-five are without adultery laws, and 25 are without sodomy laws.

When I say "without laws," I mean that they are without laws prohibiting the type of conduct which under this bill would not be a criminal act.

Senator MATHIAS. They do not define them as criminal acts.

Mr. CLARKE. Forty States would be in line with what we are proposing, in the areas of fornication, adultery, and sodomy. I am sure that in all of the States there is some prohibition against forcible sodomy. I am talking about private, noncommercial, consensual, nonincestuous, adult activity. In that case, 25 States do not criminally punish sodomy under these circumstances. Twenty-five do not punish adultery under those circumstances. Forty do not criminally punish fornication under those circumstances.

Senator MATHIAS. What about the age of consent?

Mr. CLARKE. There are 34 States in the Nation which use age-differential methods, such as was recommended by the Law Revision Commission and the congressional subcommittees, and as was recommended by the Committee on the Judiciary to the Council.

Five States use what is now the current District law, which prohibits any conduct by any male with any female under the age of 16. We will be the only State in the country treating as rape consensual sex between parties of the same age under the age of 16 as to both parties.

Senator MATHIAS. Of course, Mr. Clarke, the Federal statutes which relate to sexual conduct would govern in any applicable case. Would they not?

Mr. CLARKE. Are you speaking of the Mann Act?

Senator MATHIAS. I think the Mann Act is a little different, because that involves an interstate action.

Several years ago the Congress passed a bill dealing with child pornography and imposed very serious penalties in the case of abuse of children in connection with child pornography.

Mr. CLARKE. Of course, that law would apply, sir, as would the District's law on obscenity, which has not been at all affected by this bill and which we are in the process of strengthening.

Senator MATHIAS. Therefore, those acts of Congress which have some application here are in full force and effect.

Mr. CLARKE. Yes, sir.

Senator MATHIAS. You did say that the provision of the law by which even minors below the age of consent could each be prosecuted for their mutual act—Why was that provision adopted? What is the legislative history?

Mr. CLARKE. The legislative history of that intertwines with the community history of the act. After 3½ years of consideration and numerous pleas by me to the press to give some attention to the matter and 6 days prior to the vote on the bill, the Washington Post reported to the city that this matter was what they described as the legalization of teenage sex. That is, they reported that the age differential which we had was the legalization of teenage sex. The community became somewhat aroused.

I might note that, 5 years previously, when your State, Maryland, considered the same prospect, it warranted a one-line mention in an omnibus story.

Nevertheless, this did run on the front page of our local daily, and our community became somewhat upset over the matter. We had to make a decision then as to whether to drop that section and try to reserve it for a later time or to pull back the whole bill. We determined at that time to go to a degenderized version of what we have now and to go ahead with the bill.

That is essentially what we have done. We have degenderized the statutory rape laws and will be relying upon prosecutorial discretion in the interim.

I hope that, at some time in the future, we will be able to deal with that in a more fair manner. I have asked a number of people in the community to come together, including representatives of the ministerial community, et cetera, to address it.

We think that, in that case, the public was not really dealing with the issue we were talking about. We think that, in the other parts of the bill, including the parts which are very controversial and are before you, they were dealing with the issue—that is, the issue of the decriminalization of these matters. It was out there. It was discussed.

I can remember a number of community meetings at which I discussed the subject.

Senator MATHIAS. As you know, there was testimony before the committee this morning which in effect alleged the denial of due process, a lack of notice, and a lack of ability to participate. Do you want to comment on that?

Mr. CLARKE. The record, I think, is very clear. Notice of this measure goes back to the Law Revision Commission. It issued notices with respect to its activity. People who have testified before you today testified before that body.

This subcommittee itself issued notices with respect to the matter when it was before it as part of the Law Revision Commission's recommendations. People came before you and testified—not before you personally. They came before this subcommittee and testified with respect to the matter.

Similarly, in the House, people came before the House subcommittee and testified with respect to the measure and testified with respect to these very controversial sections. I can recall the testimony.

We held eight hearings in 1980. There was one day dedicated to this part of the Law Revision Commission's proposal. We received testimony on it.

We held two hearings this year at which we received testimony with respect to it. One thousand notices were distributed. The matter was printed in the D.C. Register, which is the official organ through which to provide notice to the public.

The newspapers did not print it. There is no ability, nor should there be an ability on the part of the City Council, to force a newspaper to print a notice.

However, given the freedom of the first amendment—which I think is a good freedom—they print it when they print it. Never-

theless, we did whatever we thought was humanly possible to get the word out with respect to this legislation.

I might say that more notice has been given of this legislation than anything which has ever been sent to you before by the elected home rule government. It has been the subject of more testimony——

Senator MATHIAS. You mean more notice at the Council level.

Mr. CLARKE. No, sir. I mean at the level of the Council, at the level of this committee and the House subcommittee when it was previously before them, and at the level of the Law Revision Commission.

Even if you just take the Council, more notice has been given with respect to the measure than has been the case of any other bill which has been sent to you.

Senator MATHIAS. Does that include taxation?

Mr. CLARKE. That includes taxation, sir.

Senator MATHIAS. Does it include zoning and planning?

Mr. CLARKE. Yes. No measure has ever had 10 public hearings by the D.C. City Council.

Senator MATHIAS. Does it include the election process?

Mr. CLARKE. Yes, sir. It includes the convention center, which was a very big one on which we did have a number of public hearings. It has been the subject of more hearings than any other measure which has ever been sent to you.

Senator MATHIAS. What does that tell you about human nature? [Laughter.] Thank you for being here.

Our next witness will be Dr. Robert Pruitt. I understand that he has not arrived. I will leave space in the record in case he wants to submit his testimony.

Without objection, the following testimony will be included in the record at this point: the statement of Stephen I. Danzansky, chairman of the District of Columbia Law Revision Commission; the statement of Arrington Dixon, chairman of the Council of the District of Columbia; and the statement of Robert L. Pruitt of the Metropolitan African Methodist Episcopal Church.

[The statements follow:]

STATEMENT OF

STEPHEN I. DANZANSKY
CHAIRMAN OF THE DISTRICT OF COLUMBIA LAW REVISION COMMISSION

BEFORE THE

SUBCOMMITTEE ON GOVERNMENTAL EFFICIENCY
AND THE DISTRICT OF COLUMBIA OF THE
COMMITTEE ON GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

ON

SENATE RESOLUTION NO. 207

A RESOLUTION TO DISAPPROVE
D.C. ACT NO. 4-69
THE DISTRICT OF COLUMBIA
SEXUAL ASSSAULT REFORM ACT OF 1981

SEPTEMBER 30, 1981

STATEMENT OF
STEPHEN I. DANZANSKY
CHAIRMAN OF THE DISTRICT OF COLUMBIA LAW REVISION COMMISSION
BEFORE THE
SUBCOMMITTEE ON GOVERNMENTAL EFFICIENCY
AND THE DISTRICT OF COLUMBIA OF THE
COMMITTEE ON GOVERNMENTAL AFFAIRS
UNITED STATES SENATE
ON
SENATE RESOLUTION NO. 207
A RESOLUTION TO DISAPPROVE
D.C. ACT NO. 4-69
THE DISTRICT OF COLUMBIA
SEXUAL ASSSAULT REFORM ACT OF 1981

SEPTEMBER 30, 1981

Thank you for the opportunity to submit this statement concerning Senate Resolution No. 207, which would disapprove D.C. Act 4-69, the District of Columbia Sexual Assault Reform Act of 1981.

I. The Law Revision Commission

The Law Revision Commission was established by Congress in 1974 to examine the laws of the District of Columbia on a comprehensive basis, to recommend changes and reforms for the purpose of remedying defects and anachronisms, and thereby "to bring the law relating to the District of Columbia . . . into harmony with modern conditions." D.C. Code, §49-402(a). Congress expressly directed the Commission to "give special consideration to the examination of the common law and statutes relating to the criminal law of the District of Columbia." Id. Consequently, the Commission devoted its full time and energies during its first four years, after it was funded in 1976, to the development of a criminal code.

The composition of the Commission ensured a skillful and impartial examination of the criminal laws and represented the views of a broad spectrum of the community. Its members were appointed by federal and local authorities, including the President, the Speaker of the House, the President pro tempore of the Senate, the Minority Leader of the House, the Minority Leader of the Senate, the Council of the District of Columbia, the Mayor, the D.C. Courts, the D.C. Bar, the Public Defender and the Corporation Counsel. I was first appointed by President Ford in 1974. Since 1976, the membership of the Commission has included the United States Attorney for the District of Columbia and the Corporation Counsel.

II. The Basic Criminal Code

The criminal laws of the District have not been revised in a comprehensive manner since 1901. They are disorganized, with related offenses scattered throughout different chapters of Title 22 of the D.C. Code; they use archaic language; and, in many cases, they fail to take into account changing concepts and approaches taken by other states, the majority of which have undertaken significant revisions of their criminal laws.

In June, 1976, the Commission organized itself into task forces to enable it to consider a number of aspects of the criminal laws simultaneously, with monthly deliberations by the full Commission. Members of law faculties of each

accredited university in the District were retained to report to the Commission on every aspect of criminal law reform, especially recent efforts in the Congress (S. 1 and S. 1437) and nationwide.

After 83 meetings of the Commission and its task forces, involving approximately 3,000 Commissioner-hours of time, the Commission completed its tentative proposal for the Basic Criminal Code in October, 1977. This proposal was the subject of unique joint hearings, held in November, 1977, by the Subcommittee on the Judiciary of the House Committee on the District of Columbia, the Committee on the Judiciary of the Council of the District of Columbia, and the Commission. The Commission thereafter obtained the views of then Chief Judge Harold H. Greene of the Superior Court, the views of prisoners at Lorton Reformatory, and numerous written submissions by various organizations and individuals.

On the basis of this testimony and submissions, the Commissioners filed 171 amendments to the tentative proposal and received a resolution of the Council itself suggesting 40 additional amendments.* During 16 meetings held in January and February of 1978 (requiring approximately 870 Commissioner-hours), the Commission considered and debated each of these amendments and suggestions. The final proposal

*Of the total amendments filed and submitted, 27 pertained to the sexual assault provisions of the Basic Criminal Code.

was a result of these lengthy and thorough deliberations. The Commission then participated in hearings held by the relevant House and Senate Subcommittees on April 25, 1978 and May 3, 1978 to consider the proposal. On December 5, 1978, the Subcommittee on the Judiciary of the House District of Columbia Committee and the Subcommittee on Governmental Efficiency and the District of Columbia of the Senate Governmental Affairs Committee issued a joint recommendation of suggested changes to the proposal.

On January 2, 1979, pursuant to section 602(a)(9) of the District of Columbia Self-Government and Governmental Reorganization Act, as amended by Pub. L. 94-402, the Council assumed the authority to amend and repeal provisions of the criminal code of the District. As a consequence, the Commission's proposed Basic Criminal Code was introduced in the Council in November 1979. During the early months of 1980, a series of eight public hearings by the Committee on the Judiciary of the Council on this bill were held at various locations throughout the city.

Although the Basic Criminal Code was not enacted during the Council period ending December, 1980, various parts of it were reintroduced in 1981. The Sexual Assault Reform Act of 1981, which was introduced by Councilmember David A. Clarke, and eventually passed by the Council and signed by the Mayor, is substantially patterned after Chapter 6 of the Commission's proposal, entitled "Sexual Assault Offenses."

In developing the Basic Criminal Code, the Commission did not proceed on the assumption that it was compelled to propose a wholesale revision of existing criminal law. Instead, the problems and advantages of each section of the present compilation of criminal laws were analyzed by the Commission's staff, its consultants, its task forces, and the full Commission. The Commission also relied heavily on work done by the American Law Institute, particularly the Model Penal Code, the Brown Commission, and the various drafts of the Federal Criminal Code, then and still pending in the Congress, in order to avoid duplication of efforts and to benefit from the viewpoints of the drafters of these documents.

III. Sexual Assault Offenses

Chapter 6 of the Commission's proposal, entitled "Sexual Assault Offenses," provides the first comprehensive revision of these laws since the enactment of the 1901 Code. It consolidates in a single chapter sexual offenses which are currently scattered over seven chapters of Title 22 of the D.C. Code. It clarifies the scope of certain offenses which had become the subject of differing judicial interpretations and constitutional challenges. It harmonizes offenses that were enacted at different times and cast in different language. It fills the gaps in current law, which leaves a large number of persons with inadequate protection against

sexual assaults. And it provides equal punishment for similar offenses.

The Commission's proposal punishes all sexual acts or contacts imposed upon others by force or fraud, or sexual acts or contacts imposed upon a person who is a member of a class deserving special protection, such as children, wards, and inmates or patients in institutions. Offenses are defined in terms of the degree of force, deception or coercion involved, or the relationship between the parties. In order to avoid challenges based on denial of equal protection of the law, all references to gender are eliminated.

The most serious offense under this proposal, Sexual Assault in the First Degree, punishes a forcible act upon any person, male or female, by another person. It is broader than the current crime of rape, which simply punishes one who "has carnal knowledge of a female forcibly and against her will or . . . carnally knows and abuses a female child under sixteen years of age." D.C. Code, §22-2801. In order to eliminate the confusion with respect to the element of consent in prosecutions under the current rape statute, Sexual Assault in the First Degree applies to one who sexually assaults another not only by actual force, but also by threatening, or placing the victim in reasonable fear of, death, abduction, or bodily injury, or by substantially impairing the victim's ability to appraise or control his or

her conduct. In response to testimony by many women's groups concerning the rape of wives by husbands, this offense does not provide immunity to the spouse of a victim of Sexual Assault in the First Degree.

The proposal also creates the offense of Sexual Assault in the Second Degree, which severely punishes one who commits a sexual act against a person who is incapable of resisting or withholding consent to the sexual act. In addition, Chapter 6 creates offenses specially designed to protect persons who are at a disadvantage to resist sexual advances--namely, children, wards, and inmates or patients in institutions. The use of custodial, legal, or other authority over such persons to make them engage in sexual activity is clearly forbidden. These new offenses are a considerable improvement over current law, which provides inadequate deterrence to such conduct.

In addition to these sexual act offenses, the proposal contains provisions punishing sexual contact in circumstances which would constitute a sexual act had penetration occurred. Definitions of sexual "act" and sexual "contact" describe explicitly the proscribed conduct.

As part of its proposal, the Law Revision Commission recommended the elimination of certain consensual sexual offenses (fornication, adultery, seduction, sodomy). This decision was based upon a thorough examination of similar revisions in other states, legislation (S. 1437) then before

the Senate Judiciary Committee, and careful consideration of the views of the United States Attorney and Corporation Counsel. The Commission determined that the arrest, prosecution, and imprisonment of persons for such offenses, which did not involve harm to other than consenting individuals, was an inefficient use of scarce criminal justice resources, which could better be used to detect and prosecute more serious offenses. Moreover, the Commission determined from information provided by authorities that the number of prosecutions for such offenses had declined to such a level that for all intents and purposes the spirit of the law was repealed. Retaining such offenses as unenforced criminal laws could have the adverse consequence of breeding disrespect for the law.

In conclusion, the proposals of the Commission, which were adopted by the Council in part, were the result of years of diligent research and deliberation by representatives of a broad spectrum of the community, both federal and local. The viewpoints of every segment of the community were heard and carefully considered on a number of formal occasions. The product of the Commission's efforts was a sincere attempt to "bring the laws relating to the District . . . into harmony with modern conditions" in accordance with our statutory mandate.

STATEMENT BY ARRINGTON DIXON, CHAIRMAN
COUNCIL OF THE DISTRICT OF COLUMBIA
BEFORE THE
SENATE SUBCOMMITTEE ON GOVERNMENTAL EFFICIENCY
AND THE DISTRICT OF COLUMBIA

SEPTEMBER 30, 1981

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE. I APPRECIATE THE OPPORTUNITY TO MAKE MY VIEWS KNOWN ON THE RESOLUTION TO DISAPPROVE THE DISTRICT OF COLUMBIA SEXUAL ASSAULT REFORM ACT OF 1981. I URGE YOU NOT TO APPROVE THIS RESOLUTION IN THE NAME OF HOME RULE AND THE RIGHT OF DISTRICT CITIZENS, AS AMERICANS, TO MAKE LAWS THAT AFFECT THEM.

THE DISTRICT OF COLUMBIA SEXUAL ASSAULT REFORM ACT WAS APPROVED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA ON JULY 14, 1981. THE GENERAL PURPOSE OF THE LEGISLATION IS TO "MODERNIZE AND CONSOLIDATE THE DISTRICT OF COLUMBIA'S LAW REGARDING SEXUAL ASSAULT, WHILE REPEALING OTHER LAW PRESCRIBING SEXUAL BEHAVIORS WHICH HAVE FALLEN INTO DISUSE."

WHILE ATTENTION HAS BEEN FOCUSED ON THOSE ASPECTS OF THE ACT THAT WOULD LIBERALIZE THE LAW, I WOULD LIKE TO POINT OUT THAT MANY PARTS OF THE BILL ACTUALLY MAKE EXISTING LAW MORE STRINGENT BY BROADENING THE CONCEPT OF RAPE BY EXPANDING THE FORMS OF COMPULSION, BY CONSOLIDATING SEXUALLY PROHIBITED CONDUCT INTO ONE SET OF LAWS WHICH COULD PENALIZE ANY SEXUAL ATTACK UPON ANY PERSON REGARDLESS OF THE SEX OF EITHER PERSON, AND BY EXPANDING THE PROTECTION AGAINST SEXUAL ABUSE OF HITHERTOFORE UNPROTECTED CLASSES OF PEOPLE.

BUT THE POINT OF THIS TESTIMONY IS NOT WHAT THE LAW WOULD DO, BUT HOW IT BECAME ENACTED. THIS BILL WAS NOT HASTILY CONCEIVED AND THOUGHTLESSLY APPROVED, BUT WAS INSTEAD THE RESULT OF A LONG PROCESS THAT ALLOWED FOR CONSIDERABLE COMMENT BY CITIZENS AND LEGAL EXPERTS.

THE SEXUAL ASSAULT LEGISLATION WAS FIRST CONSIDERED BY THE DISTRICT OF COLUMBIA LAW REVISION COMMISSION. IT WAS INTRODUCED IN THE COUNCIL ON FEBRUARY 10, 1981 BY COUNCILMAN DAVID CLARKE AND WAS COSPONSORED BY COUNCILMEMBERS WILHELMINA ROLARK, POLLY SHACKLETON, AND HILDA MASON. NOTICE OF THE PROPOSED LEGISLATION AND NOTICE OF PUBLIC HEARINGS APPEARED ON FEBRUARY 20TH IN THE DISTRICT OF COLUMBIA REGISTER. PUBLIC HEARINGS WERE HELD ON MARCH 12TH AND 13TH WITH TWENTY (20) WITNESSES TESTIFYING. THE BILL WAS MARKED UP IN THE COMMITTEE ON THE JUDICIARY ON JUNE 3, 1981.

THIS BILL WENT BEFORE THE COUNCIL IN LATE JUNE AND WAS THE SUBJECT OF CONSIDERABLE CONTROVERSY IN THE MEDIA AND BY THE PUBLIC. AS A RESULT, CERTAIN PORTIONS OF THE BILL WERE MODIFIED BY THE COUNCIL TO MAKE IT MORE IN CONSONENCE WITH THE VALUES OF THE CITIZENS OF THE DISTRICT.

THE BILL THAT WAS APPROVED BY THE COUNCIL IS NOT A RADICAL ONE. VIRTUALLY EVERY STATE IN THE UNION HAS ADOPTED SIMILAR LEGISLATION.

OF MORE DIRECT RELEVANCE IS THE FACT THAT THIS BILL DOES NOT AFFECT THE FEDERAL INTEREST, NOR DOES IT IMPACT ON THE INTERNATIONAL COMMUNITY IN THE NATION'S CAPITAL.

PASSAGE OF THIS LAW IS TOTALLY WITHIN THE MANDATE OF THE COUNCIL OF THE DISTRICT OF COLUMBIA AS EXPRESSED BY THE HOME RULE ACT, THE PURPOSE OF WHICH WAS TO RELIEVE CONGRESS FROM LEGISLATING UPON ESSENTIALLY LOCAL DISTRICT MATTERS. I, THEREFORE, ASK YOU TO NOT APPROVE THE RESOLUTION THAT IS BEFORE YOU, AND TO LET STAND THE WILL OF DISTRICT CITIZENS AS EXPRESSED BY THEIR LEGISLATORS.

THANK YOU.

METROPOLITAN AFRICAN METHODIST EPISCOPAL CHURCH

1518 M Street, N.W. • Washington, D.C. 20005

Telephone (202) 331-1426

ROBERT L. PRUITT, D.D.
Minister

STATEMENT OF DR. ROBERT L. PRUITT

OF THE METROPOLITAN AFRICAN METHODIST EPISCOPAL CHURCH

BEFORE THE SENATE SUBCOMMITTEE ON GOVERNMENTAL EFFICIENCY

AND THE DISTRICT OF COLUMBIA

I am pleased to have this opportunity to address you regarding your consideration of a resolution to disapprove the Sexual Assault Reform Act of 1981. I am aware of the long process that this act has been through. I know that it was first developed by a Commission created by the Congress, that it was before this Congfess as a part of a larger measure, and that it was essentially recommended to our City Council by subcommittees of the Congress.

More than that, I am aware that of the exhaustive efforts of the Council and its Judiciary Committee to put the proposal before the people of this city and to allow them the opportunity to address it. No less then ten public hearings were held by the Council's Judiciary Committee over a span of a year in which citizens were given the opportunity to address the measure. I am aware that many persons testified in favor of the measure while few, if any, persons opposed it. Thousands of

summaries were distributed. The matter came before our Council and was twice voted upon and thereafter considered and signed by our Mayor.

This process is one which involved our citizens and our government, and whatever its advantages or shortcomings, it is ours.

I have now become aware that, after three and one half years of struggling with the issue and having acted upon it, there comes to you Reverend Jerry Falwell and the group he selects to call the Moral Majority decreeing that he and his group are the possessor of all moral wisdom and declaring that any member of Congress failing to vote as he has decreed is guilty of a sin.

As a member of the Washington community and as a minister, I cannot let such pontifications go by without response.

First, I do not know whether it was intentional false witness or not, but the factual descriptions of the act spread about the nation by the Moral Majority and its allied organizations are grossly inaccurate. The act does not remove the prohibitions of <u>all</u> homosexual conduct; indeed, in some respects it increases them. The act does not remove all sanctions for adultery but only those that would send to prison those who would commit it. Moreover, the major part of the act includes provisions which expand rather than constrict the ability of law enforcement to penalize forcible and overly coercive sexual assault activity. This is tremendously important to many people in our community particularly women and organizations advocating their cause who fought hard for its passage.

But I will leave to others to describe the act's detail. I have come here to encourage respect for the right of District of Columbia citizens to govern themselves.

I respectfully request that respect of the Congress which extended home rule to the District and which, in this particular case, recommended that the Council do what it has done.

And I demand it of the Reverend Falwell and his Moral Majority and allied organizations. I have never known the Council's Judiciary Committee to turn down a person's request to appear. If Rev. Falwell felt so strongly about the content of the measure, he could have come and testified before the Council. If he feels so strongly about the content of the measure, he might address the laws of the majority of the states which have similar provisions. If his personal measure of success is the deterrence of such legislation as what is before you rather than showing how much he can push the Congress around by his declarations that to not vote his way is a sin, then he would have been before the Council, and he would be before many state legislatures seeking the repeal of similar legislation.

Mr. Chairman, our community does not need the Moral Majority to stand between its priests and their parishioners, nor between its elected officials and their constituents. We are not a stage upon which national forces can come to act out dramas. The legislation which the Council passes, whatever its advantages or shortcommings, is ours, and please let us deal with it.

Lest there by any doubt, let me make absolutely clear that I do not support nor encourage the commission of adultery, fornication or sodomy.

But since the Moral Majority likes to be Biblical permit me to quote from the scriptures, (John 8 to be exact) that these matters could be the subject of fundamental moral precepts without the necessity of stones being thrown at their violators. My own Savior looked at a condemned

adultress's accusers and told them to let the one of them who was without sin throw the first stone. None did. Christ, who was without sin himself, likewise refused to punish the lady but told her to go and sin no more. He made clear, to me at least, that it is not necessary to the strength of moral values to provide that those who violate them in every instance be civilly punished. The strength of these moral values lies, in the institution of the family and the institution which my brethern of the cloth and I represent.

Again let me be Biblical (Daniel 3, 5-6, to be exact) of great rulers who did not want to mete out certain punishments, but did so in order to satisfy the cries of a morally indignant mob or a well-established clergy.

King Darius did not want to put Daniel in the lion's den but did so because of the pressure placed on him by lesser politicians.

A King named Nebuchadnezzar thought he was serving some god when he ordered Shadrach, Meshach and Abednego to the furnace.

Again to be Biblical (Matthew 27, Mark 15, Luke 23, and John 18 to be exact) of a governor named Pontius Pilate who twice proclaimed that he found no fault with Christ, but who under the mounting pressure of mobs spurred on by the lawyers and priests of the day sent the only truly sinless man in the history of the human race to the cross.

Showing the proper respect for mercy and proper disrespect for self-righteousness is a difficult task for one in Pilate's shoes in times when people are misled into fear by modern day pharisees and sadducees. I pray that, by the grace of Christ who rose from his crucifixion and that by the power of God which brought Daniel out of the den and Shadrach, Meshach, and Abednego out of the furnace, that you will find the strength to wear those shoes today.

Senator MATHIAS. The subcommittee stands adjourned subject to the call of the Chair.

[Whereupon, at 11:45 a.m., the subcommittee was adjourned.]

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

97TH CONGRESS
1ST SESSION

S. RES. 207

To disapprove of the District of Columbia Act 4–69, relating to the reform of the sexual assault laws of the District of Columbia, and for other purposes.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 9, 1981

Mr. DENTON (for himself, Mr. HELMS, Mr. EAST, and Mr. HATCH) submitted the following resolution; which was referred to the Committee on Governmental Affairs

---

RESOLUTION

To disapprove of the District of Columbia Act 4–69, relating to the reform of the sexual assault laws of the District of Columbia, and for other purposes.

Resolved, That the Senate disapproves of the action of the District of Columbia Council described as follows: The act entitled "An Act to reform the sexual assault laws of the District of Columbia, and for other purposes", approved July 21, 1981 (D.C. Act 4–69), transmitted to the Congress pursuant to section 602(c) of the District of Columbia Self-Government and Governmental Reorganization Act on July 21, 1981.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE

OFFICE OF THE CITY ADMINISTRATOR

ASSISTANT CITY ADMINISTRATOR FOR
INTERGOVERNMENTAL RELATIONS
1350 E STREET, N.W. - ROOM 416
WASHINGTON, D.C. 20004

September 30, 1981

The Honorable Charles McMathias
Chairman
Subcommittee on Governmental Efficiency
and the District of Columbia
United States Senate
6222 Dirksen Senate Office Building
Washington, D.C. 20015

Dear Mr. Chairman:

Pursuant to your request I have enclosed a report issued by the American Bar Association in July, 1981 comparing the age of consent statutes in the fifty states and the U.S. Territories.

If I can be of further assistance in this matter please do not hesitate to contact me.

Sincerely,

Barbara C. Washington
Assistant City Administrator
for Intergovernmental Relations

Enclosure

CHILD SEXUAL ABUSE AND THE LAW

A Report of the

American Bar Association NATIONAL LEGAL RESOURCE CENTER FOR CHILD ADVOCACY AND PROTECTION

A Program of the ABA Young Lawyers Division

Editor

Josephine Bulkley, J.D., Director, Child Sexual Abuse Project, American Bar Association/National Legal Resource Center for Child Advocacy and Protection

Authors

Lucy Berliner, M.S.W., Co-Director, Sexual Assault Center, Seattle, Washington

Linda Canfield-Blick, M.S.W., Director, Family Assessment and Treatment Program--Child Sexual Abuse, Montgomery County, Maryland

Josephine Bulkley, J.D., Director, Child Sexual Abuse Project, American Bar Association/National Legal Resource Center for Child Advocacy and Protection

Lynne Kocen, Former Law Clerk, American Bar Association/National Legal Resource Center for Child Advocacy and Protection

David Lloyd J.D., Criminal Justice Specialist, Child Protection Center-Special Unit, Children's Hospital National Medical Center, Washington, D.C.

Gary Melton, Ph.D., Director of Research, Institute of Law, Psychiatry and Public Policy, University of Virginia; Assistant Professor, General Law Faculty and Psychology, University of Virginia

Donna Wulkan, Law Clerk, American Bar Association/National Legal Resource Center for Child Advocacy and Protection

National Legal Resource Center for Child Advocacy and Protectio

American Bar Association
1800 M Street, N.W., S-200
Washington, D.C. 20036
(202) 331-2250

Resource Center Staff

Howard A. Davidson
Director

Robert M. Horowitz
Assistant Director

Shirley A. Gravely
Assistant Director

Mark Hardin
Assistant Director
Planning for Children
in Foster Care

Mattie Dupree
Secretary

Josephine Bulkley
Assistant Director
Child Sexual Abuse Project

Patricia Hoff
Assistant Director
Child Custody Project

Bonita J. Ross
Administrative Assistant

Alice Bishop
Secretary

Advisory Board Members

Bruce A. Kaufman, Chairperson
ABA Young Lawyers Division

Andrew Billingsley
Morgan State University

Donald C. Bross
National Association of
Counsel for Children

Elizabeth S. Cole
Child Welfare League of America

Robert F. Drinan
Georgetown University Law Center

Peter W. Forsythe
Edna McConnell Clark Foundation

Frederick C. Green
Children's Hospital National
Medical Center

Sanford N. Katz
ABA Family Law Section

Orm W. Ketcham
National Center for State Courts

Marcia R. Lowry
ACLU Children's Rights Project

Marilyn J. Michales
ABA Young Lawyers Division

Hon. Enrique H. Pena
National Council of Juvenile
and Family Court Judges

Albert J. Solnit
Yale University, Child Study Center

Michael S. Wald
Stanford Law School

Hon. Patricia M. Wald
U.S. Court of Appeals for
D.C. Circuit

Administrative Support

DIRECTOR, ABA DIVISION OF PUBLIC SERVICES ACTIVITIES
Katherine McG. Sullivan

This publication was made possible by Grant No. 90-C-1690 from the National Center on Child Abuse and Neglect, Children's Bureau, Administration for Children, Youth and Families, Office of Human Development Services, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES. The contents should not be construed as official policy of the American Bar Association, the National Center on Child Abuse and Neglect or any other agency of the Federal Government.

Copyright Statement

Except where otherwise stated this report is not copyrighted; no permission need be requested of the

FOREWORD

Much has been written in recent years on the subject of child sexual abuse. The problem has been discussed in newspaper stories, television documentaries, and women's magazines. Sexual abuse and incest have become familiar topics at conferences and in the professional literature, and no less than a dozen new books have been published in the last five years that deal exclusively with the subject of child sexual abuse.

Despite this paper promise of written resources for practitioners in the field of child protection, most of what is available has been written for general audiences and lacks the specificity that would make it truly useful to lawyers, policy-makers or clinicians. In addition, because most of the available materials on this subject were developed over the same, relatively short time period, they reflect a similar level of state-of-the art knowledge beyond which most of the literature does not go. Detailed information on child sexual abuse that is aimed at the legal profession is even less available than for other professions, despite the fact that the criminal justice system is more likely to be involved in cases of sexual abuse than any other form of child maltreatment short of homicide or permanent disability.

For all of these reasons, as well as in response to our most common requests from the field, the National Center on Child Abuse and Neglect and the National Legal Resource Center for Child Advocacy and Protection joined together to develop materials on the legal, statutory and programmatic aspects of child sexual abuse. They are designed to be practical, rather than philosophical in nature, and are geared toward an audience of attorneys, legislators, prosecutors, clinicians and program planners. As such, these materials do not attempt to address the questions of whether or not the criminal justice system should be involved in cases of intra-family child sexual abuse or how and to what extent criminal prosecution of cases, diversion or plea bargaining is harmful or helpful to the victims and families affected by sexual abuse. They also are not intended to pass judgment on which state laws, diversion programs or treatment approaches are "best" for dealing with this problem. The state of our collective knowledge is in far too developmental a stage and reliable outcome data is far too sparse to make such determinations at this time.

These materials, contained in this as well as a forthcoming publication, are intended to provide the most detailed analysis possible of state laws on child sexual abuse, legal and clinical issues as they relate to legal action, and a sampling of programs which utilize the justice system to enforce or enhance treatment.

If these materials contain a philosophical bias, it is that, although intra-family sexual abuse of children is a crime in every state and, as such, deserves to be taken very seriously by both the criminal justice and child protective systems, it is also a serious and traumatic problem for individual family members who need and deserve treatment and remedial services as well as, if not more than, social justice. It is not enough to condemn, pity, or pass legislation. Our justice system is being used in increasingly creative ways to help to repair and ameliorate some of the damage caused to children and families by the existence of child sexual abuse.

The National Legal Resource Center for Child Advocacy and Protection and Josephine Bulkley, coordinator of this project, have provided a most valuable resource to the field in the development of these materials. Just as there is no single cause or effect of child sexual abuse, there is no single recipe or solution for every case that can be adopted by the legal or social service systems. What is provided in these manuals is the most up to date snapshot in time of the laws, procedures and systems available to deal with this problem. It provides an optimistic picture of laws and systems that appear to be in the process of changing in ways that will provide better protection to children and help to family members without adding to the trauma already caused by the abuse.

Kee MacFarlane
Program Specialist
National Center on Child Abuse
and Neglect
U.S. Department of Health
and Human Services

July, 1981

PREFACE AND ACKNOWLEDGEMENTS

Every state requires certain persons, including doctors, teachers, psychologists and others working closely with children, to report suspected child sexual abuse. Such reports often result in some form of legal intervention. The legal action taken may be criminal prosecution of the perpetrator; or, where the offender is a parent or caretaker, a juvenile court proceeding to protect the child may be brought against the offender as well as the "passive" parent. Or, as frequently occurs, both proceedings may be initiated.

This report is the product of a one-year research effort to survey and analyze state laws and legal issues which may come into play when one or more of the above proceedings are instituted. The question of whether legal intervention is appropriate at all is not addressed here. That issue is currently the subject of debate among the various professionals involved in this field and has been covered in a previous publication of the ABA-National Legal Resource Center for Child Advocacy and Protection called Child Sexual Abuse: Legal Issues and Approaches. As a practical matter, sexual abuse of children often becomes the basis of some type of court action, although such intervention has been criticized for failure to protect the interests of both the child and family. For this reason, new approaches must be developed for improving the legal system's handling of these cases. Toward that end, this report identifies problem areas, trends and reforms in the laws. A forthcoming publication will examine innovative prosecutorial practices and policies as well as programs which combine alternative legal dispositions with treatment.

This report focuses upon intra-family child sexual abuse, which we have defined as "any contacts or interactions between a child and other family member in a position of power or control over the child, where the child is being used for the sexual stimulation of the perpetrator or another person." However, most of the principles and issues discussed herein apply equally to cases involving non-family perpetrators.

The report is primarily designed as a resource guide to members of the legal profession, including legislators, prosecutors, defense counsel, guardians ad litem, parents' attorneys, and judges. However, we believe the information will also be extremely valuable to other professionals, such as mental health professionals, child protective services workers, doctors and police officers who work with sexually abused children. Their understanding of the legal aspects of this problem can lead to improved interdisciplinary case management and coordination. This, in turn, will result in better services for the child, offender, and family and help to reduce the trauma to the child. Finally, other professionals' knowledge of the legal issues may contribute to more successful prosecutions, since their involvement may include gathering and preserving evidence. Thus, the book has attempted to present information in a straightforward, readable manner, using a minimum of legal jargon.

This publication is broken down into several main areas: The first four chapters include statutory analyses of state criminal codes, incest laws, and child protection statutes, as well as domestic violence and sexual psychopath laws as they relate to child sexual abuse. Chapters 5 through 9 deal with key evidentiary issues which frequently arise in a child sexual abuse case. Chapter 10 concludes the report with a discussion of how legal procedures can be modified to prevent trauma to the child caused by testifying in open court. Each chapter begins with a brief introduction which highlights the topic and, to some extent, its relevance to the problems it poses within the legal system. This makes it possible for each chapter to stand on its own as an integral piece.

Charts of the laws in each of the 54 U.S. jurisdictions are included in the following areas: the criminal sexual intercourse statutes relating to children; the criminal sexual contact statutes relating to children; and the incest statutes. These charts provide a quick, easy reference to the key elements of these laws as well as the legal citations to each jurisdiction's law. Every effort has been made to include all laws currently in effect at the time of publication. However, given the scope of legislative activity in this area, statutory references should be checked by readers to assure that laws have not been amended or repealed.

Special thanks are due to the many people without whom it would not have been possible to publish this report. Gratitude is expressed to Howard Davidson and Bob Horowitz for their assistance in designing, planning, and editing the report, as well as for their time, concern, and legal wisdom.

Appreciation also goes to several law clerks: Lynne Kocen, for her extraordinary statutory research effort and her design and preparation of the charts; Donna Wulkan, for her major research assistance; Daniel Nash and Jerry Solomon for their proofreading and editing help.

Thanks are also due to other staff, who devoted significant time and energy: Alice Bishop, for her untiring and indispensable contributions in typing, correcting, and coordinating the production of this report; Shirley Gravely, for her important help in designing the cover and title pages, as well as the charts; Mark Hardin, for his legal and other advice; and Bonita Ross, for her typing assistance. Thanks also are due to Mary Dunn Blackwell, the project's former secretary, for her valuable clerical assistance.

Finally, a special acknowledgment is extended to Kee MacFarlane, who is responsible for the creation of the Child Sexual Abuse Project and thus, this report, and who has provided invaluable guidance, expertise, and encouragement throughout the preparation of this publication.

Chapter 1

ANALYSIS OF CRIMINAL CHILD SEX OFFENSE STATUTES

Lynne Kocen
Josephine Bulkley

I. Introduction

This chapter includes a state-by-state breakdown of every jurisdiction's criminal child sex offense statutes (see chart at the end of the chapter), as well as a discussion and analysis of the problem areas and trends in the laws. It should be noted that in most states, child sexual abuse also may be prosecuted under statutory provisions which provide criminal sanctions for any type of parental child abuse or failure to support, or for contributing to the delinquency of a minor. These are apart from the general criminal assault and battery statutes or the sex offense statutes. In most jurisdictions, child sexual abuse is prosecuted under the sex offense and incest statutes. However, the general child abuse criminal provisions are used in some states, and deserve mention although they are not reviewed in this report.[1]

While all forms of child abuse perpetrated by a parent or caretaker are crimes which may be criminally prosecuted, most cases of physical abuse (unless death or severe physical harm results) are handled only in the juvenile court system as a child protection proceeding. Indeed, cases of sexual abuse are also often the subject of such proceedings. The purposes and effects of juvenile court action, however, differ significantly from that of criminal prosecution. The key issues which distinguish juvenile court action from criminal prosecution are: 1) the primary goal is protection of the child, not punishment of the parent; 2) the parent faces no criminal sanctions and their ramifications; and 3) treatment and services to help the family are more readily available in the juvenile court action.

Unlike physical abuse cases, intra-family child sexual abuse cases are frequently handled by the criminal justice system; in fact, there often are simultaneous proceedings in both the juvenile and criminal courts. However, whether sexual abuse of a child by a parent or caretaker should be criminally prosecuted is not addressed here except for the following brief comments. The trauma of the legal process upon the child victim and the frequently inadequate alternatives within the criminal justice system for dealing with the intra-family offender have been amply described in other literature dealing with the subject of child sexual abuse.[2] The benefits of criminal prosecution in intra-family cases also have been noted. These include, among others, protecting society, serving as a symbol to society and the child of the total unacceptability of the behavior, and providing an authoritative incentive or leverage to insure treatment of the offender and family.[3]

However, and most importantly, the reality within this country today is that sexual activity with children by adults is a crime in every state.

Police are obligated to investigate and prosecutors have a duty to prosecute persons who commit such crimes. A number of state child abuse reporting laws require child protective services to report sexual abuse and other forms of child abuse to law enforcement agencies or the district attorney's office. [4] Thus, until states pass new laws providing alternatives to or improvements in the criminal justice system, existing laws will continue to be enforced.

Prosecutors' offices in a number of jurisdictions have begun to experiment with alternative forms of prosecution under special statutory authority allowing "diversion." [5] These innovations will be described in a later publication of the ABA's Child Sexual Abuse Project. Other jurisdictions have developed special procedures and approaches for alleviating the stress to the child of criminal prosecution.[6] Indeed, this report suggests ways in which cases of child sexual abuse can be handled more competently and sensitively by the legal system. However, this chapter is limited to describing the purpose, current status, and reforms in the criminal child sex offense statutes.

II. Historical Background

This section briefly examines criminal child sexual abuse laws in light of their historical development and the legislative and public policy goals they sought to achieve. When the earliest statutory rape laws were imported to the United States from England, the legislative goal was the protection of very young children from sexual abuse.[7] Until the late 1800's most state statutes prohibited "carnal abuse," "carnal knowledge," or sexual intercourse with female children age 10 or below.[8] A child below that age was considered too immature to knowledgeably consent to or refuse sexual behavior. A female child above the age of 10 was protected by the criminal code only from sexual intercourse to which she did not consent, that is, from forcible rape.

By the 1950's and 1960's, however, the majority of states had set the statutory age for protection of young females from sexual behavior above age 10.[9] A second type of statute thus evolved which prohibited sexual intercourse or "carnal knowledge" with any female under age 16 or 18, or with any female between the ages of 12 and 16, regardless of whether she consented.[10] These statutes are the ones commonly referred to as "statutory rape" laws. The term "intercourse" or "carnal knowledge" was variably defined from state to state by case law, and included vaginal intercourse as well as oral or anal intercourse, or both.[11]

According to one commentator, these statutory rape laws sought to prevent not only sexual exploitation of young girls, but to prevent any consenting relations with women under a specified age in order to preserve their virginity or chastity.[12] The emphasis of statutory rape legislation was thus expanded from protection against sexual harm to include promoting certain moral attitudes regarding sexuality. The penalties provided in the statutes reflected this purpose, since they were lower than those for statutory rape involving young children and for forcible rape.[13] Further, the statutory rape laws were used to "bring about a 'shot-gun' marriage to a pregnant teenager who had been forbidden access to contraceptives by statute."[14]

An excellent discussion of the purpose of California's statutory rape law can be found in one of the dissenting opinions in the recent United States Supreme Court case Michael M. v. Superior Court.[15] The Supreme Court held that the statute did not discriminate against males by only punishing the male for engaging in sexual intercourse with a minor female (under 18).[16] While the majority (five of the justices) was satisfied that at least one of the purposes of the statute is to prevent illegitimate teenage pregnancies, three of the dissenters disagreed. In tracing the California law's history since 1850, the dissenting opinion indicated:

> It was only in deciding Michael M. that the California Supreme Court decided for the first time in the 130-year history of the statute, that pregnancy prevention had become one of the purposes of the statute.[17]

The dissent noted that the legislative history of the California statutory rape law clearly indicates that the purpose of the law is to protect the virtue of young girls.[18]

In addition to statutory rape provisions, most states also enacted statutes which protected children from "indecent liberties," "lewd and lascivious acts," or "molestation." These provisions covered sexual behavior which fell short of sexual intercourse, such as the touching of the young child's private parts or genitals.

III. Recent Statutory Rape Law Reform

Beginning in the mid-1960's and continuing into the 1970's, rape law reform was initiated again. The pendulum has now swung back to the earlier concern with protecting the child victim.[19] Partly in response to changing sexual mores, new reform legislation treats rape as a crime against bodily security rather than a crime against morality. The similarity between the original and reform laws stops there, however. Under traditional statutes, there was normally only one degree of statutory rape, carrying a single, severe penalty.[20] Further, the traditional laws often employed vague and inflammatory language, such as "carnal knowledge" or "lewd and lascivious." The newer statutes include a range of specifically defined prohibited sexual acts, and include factors such as the age of the perpetrator, the age of the victim, the relationship between the victim and perpetrator, and the use of deadly force, as well as a hierarchy of corresponding penalties.

A. Definitions of Prohibited Sexual Acts

The new legislative attitude is reflected in the specific definition of prohibited sexual acts. The traditional laws defined rape narrowly in terms of sexual intercourse. The reform legislation has expanded upon the definition of sexual intercourse at the same time that it has become more explicit as to what acts are covered by the definition. Only four states,[21] the District of Columbia and Puerto Rico still retain the old term "carnal abuse" or "carnal knowledge." Of the remaining 46 states and three territories, 25 states and one territory explicitly define sexual intercourse as vaginal intercourse.[22] The others simply refer to it as "sexual intercourse."[23]

The new explicitness of definition in reform legislation is most clearly stated in the crime traditionally referred to as "deviate sexual intercourse," although it is still defined in some states as "the detestable and abominable crime against nature, committed with mankind or beast."[24] Today, 42 states and two territories define it in terms of anal intercourse or oral intercourse, or, as fellatio, cunnilingus and analingus.[25] Except Indiana, all states which define "deviate intercourse" include both oral and anal intercourse in their definitions. About half the states include the acts which are commonly considered as "deviate" intercourse as part of a general definition of intercourse.[26] It is interesting to note that while 18 states explicitly define "deviate" intercourse, they do not define vaginal intercourse any more than calling it "sexual intercourse."[27]

Most statutes continue to protect minors up to age 16 or 18. However, five states do not protect minors either above age 14 (Colorado, Hawaii, and Georgia) or above age 15 (South Dakota and Virginia). North Carolina only prohibits intercourse with minors above age 12 if the perpetrator is a parent or caretaker. Thus, in North Carolina, a stranger who sexually abuses a minor over age 12 would have to be prosecuted under the state's rape law, which requires proof that the intercourse was accomplished by force and against the victim's will.[28] As a result, juries may be reluctant to convict and prosecutors may be hesitant to file charges in a case involving a minor close in age of consent (such as 15, 16, or 17 year olds). Under the reform laws, convictions may be obtained more easily in cases involving teenagers where the penalty is less severe.

B. Degrees of Prohibited Acts

Perhaps the major reform in defining sex crimes against children is to replace one degree of statutory rape with several degrees of sexual intercourse offenses and to graduate the penalties based on different age categories of the victim. As will be discussed later, many states have parallel provisions of sexual contact offenses.

In addition to establishing differing degrees of criminality based on the age of the victim, the majority of reform statutes also include the age of the perpetrator or his relationship to the victim as factors in defining the offense. Most of the statutes which include these factors punish intercourse with a minor where the perpetrator: is over a certain age; is one or more years older than the child; or is in a position of control or power over the victim.[29]

Today, 46 jurisdictions have some variation of statutory rape reform legislation. Only five states,[30] the District of Columbia, American Samoa, Guam and Puerto Rico maintain the traditional statutory rape provision by prohibiting consenting intercourse with a female under 14, 15, 16 or 18, regardless of the perpetrator's age and/or relationship to the child. Under such provisions, the perpetrator could be close in age to, the same age as, or younger than the victim and be subjected to the same severe penalty.[31] In addition, the perpetrator could receive the same penalty for a sexual offense with a very young child as he could with a teenage child.

1. Tiered Structure of Offenses

Reform statutes are tiered or graduated in a variety of ways with a corresponding hierarchy of penalties. Thirty-nine states have some form of tier structure, where the penalty is graduated according to the age of the victim, or the age of the victim in conjunction with the age of the perpetrator and/or a relationship with the perpetrator. Six jurisdictions provide a tiered structure of offenses based upon the age of the victim only, without regard to the age of, or relationship with, the perpetrator.[32] The remaining 33 states tier their statutes on the basis of the victim's age and either or both the perpetrator's variables of age or relationship.[33]

Twenty-five states use the perpetrator's age as a variable in conjunction with the victim's age.[34] Fifteen states have tiered their provisions which include the victim's relationship with the perpetrator.[35] Nine states fit in both categories with a tiered structure which includes separate provisions tiered according to the perpetrator's age and relationship with the victim.[36]

2. Age Differential Between Victim and Perpetrator

Thirty-four jurisdictions have included some measure of difference between the age of the victim and the age of the perpetrator in defining some or all of their sex offenses prohibiting intercourse with minors.

Regardless of whether there is a tiered structure, differentials between the age of the victim and the age of the perpetrator are expressed in one of two ways. One way is to state a specific minimum age for the perpetrator, above which intercourse with the child victim is considered criminal.[37] For example, Pennsylvania prohibits intercourse with a victim under age 14 by anyone 18 years of age or older.

The other way the differential may be expressed is based on a certain span of years between the age of the victim and the age of the perpetrator. In these states, sexual activity is prohibited where the perpetrator is two,[38] three,[39] four,[40] or even ten years or more older than the victim.[41] For example, Maryland has two provisions which make intercourse criminal only where the perpetrator is four or more years older than the victim. In one provision, the differential applies to victims under 14; in the other to victims age 14 or 15. The difference is in the penalties; where the victim is under 14, the maximum penalty is 20 years imprisonment.

Most states have a combination of one of the above two methods of expressing age differentials and a provision or provisions not specifying any age for the perpetrator.[42] Two states have both an age limit and an age span in the same provision,[43] and one state has all three types.[44]

Of the thirty-four states having age differentiation provisions,[45] thirteen provide an age differential for victims of every age, prohibiting intercourse with victims in several age categories where the perpetrator is a certain number of years older.[46] For example, in Washington state, intercourse with a victim under 11 is criminal only if the perpetrator is over 13; with a victim 11, 12, or 13, it is criminal where the perpetrator is over 16; and with a victim age 14 or 15, if the perpetrator is over 18. Again, where the victim is older, the penalties are lower.

Ten states have age differential provisions which apply only to older children or adolescents. They prohibit intercourse with a younger child regardless of the perpetrator's age, while, for example, such intercc with a 12, 13, 14, or 15-year old is criminal only if the perpetrator is over 16.[47] Two states do the reverse and apply the age differential only to young victims.[48]

Requiring the perpetrator to be older than the victim, particularly an older teenage victim, seems to indicate a legislative intent to decriminalize sexual activity between minors, especially teenage minors. Some reform statutes, therefore, no longer seek either to discourage pre-marital sex or to preserve a female's virginity.[49]

However, a number of statutes continue to maintain provisions penalizing sexual intercourse between teenage minors close in age. Some states simply set no perpetrator age, thus permitting prosecution of a minor teenage male for engaging in sexual intercourse with a minor teenage female, whether or not it was a voluntary act.[50] At least four states [51] specifically provide penalties for sexual intercourse between minor teenagers. For example, Illinois has a provision within its criminal sex offense statute which specifically makes both teenage minors liable criminally for "contributing to the delinquency of a child." The provision prohibits all sexual conduct between persons age 14 and 18 and is classified as a misdemeanor with a low one year or less prison penalty. The legislative history specifically states that the section "is intended to preserve the state penal policy of discouraging premature ventures into sexual experience."[52] Further, the Comments indicate that both the female and male are liable, specifically rejecting the assumption that the boy is always the "offender." The provision is aimed at both participants "as contributing to each other's delinquency when both parties are of similar age and maturity."[53] Thus, the Illinois provision is clearly discouraging pre-marital sex between minor teenagers, although it apparently does not seek to protect the female's chastity.

3. Relationship Between Victim and Perpetrator

In addition to age differentials, the perpetrator's relationship with the victim may also be a basis for determining the degree of criminality. Thus, consenting intercourse may be specially prohibited where the perpetrator is: (1) a parent or legal guardian; (2) in loco parentis; (3) a custodian, in charge of the care and custody or supervision of the child; (4) a foster parent; (5) a blood or affinity relation; (6) a household member; or (7) a person in a position of authority (which may include teachers or others

outside the family), which position is used to cause the victim to submit.[54] These provisions are found in 17 states,[55] and provide special penalties for intercourse in the specified relationship. As discussed in detail later, a number of statutes include a combination of these perpetrator/victim relationships.

The age of the victim, and sometimes the age of the perpetrator, is also a significant factor found in the relationship provisions. As is illustrated later, most of the relationship provisions specifically protect the 13 to 16 year old victim,[56] although four states protect any victim under the age of 16[57] or 18[58]. Providing explicit protection for the teenage victim in these circumstances seems to indicate legislative recognition that teenagers may not be able to avoid becoming involved in sexual intercourse with those in a position of power, control or authority over them. This is particularly true where the perpetrator is a parental figure. In these cases, the perpetrator frequently initiates the sexual activity before the child reaches adolescence, and it usually continues into the child's teenage years. It has been noted that if the sexual abuse is disclosed, it often occurs during the teenage years after it has repeatedly taken place over a long period of time.[59] One reason cited for this in father-daughter incest cases is that the teenage daughter reveals the abuse because the father tries to prevent her from dating.[60] Another possible reason for its disclosure during the teenage years is that the child is less dependent on the parents and more able to accept the risk of severing the parent-child bond if the abuse is disclosed.

Recognition of this type of intra-family child sexual abuse and its potential for psychological harm to the victim is reflected in the penalties for this crime. Where the victim is a teenager, ages 13 to 16 or 18, the penalties for this crime in most states are as severe as those for intercourse by a stranger with a young child under the age of 13 or 14. This is contrasted with lower penalties for the same crime involving a stranger and a teenager. For example, in Tennessee, where the perpetrator is related by blood or is in a position of custodial or official authority, the penalty for intercourse with a victim age 13 to 16 is ten years to life imprisonment; this is the same penalty as would apply to a stranger who has intercourse with a child under 12. On the other hand, intercourse by a stranger with a child age 13 to 16 carries the much lower penalty of two to 10 years. Similarly in Michigan, the same term of up to life imprisonment may be imposed upon a perpetrator of the prohibited relationship (related by blood, a member of the victim's household or in a position of authority) who has intercourse with a 13 to 16 year old as may be imposed upon a stranger for intercourse with a child under 13; the same crime between a stranger and a child between 13 and 16 carries a penalty of 15 years or less. Only Florida, Iowa, and South Carolina provide for penalties which are less than the maximum penalty for intercourse with a young child, although the difference is minimal.[61]

The seven categories of prohibited relationships fall into general types, although there is a great deal of overlap. One type prohibits intercourse in a family setting and the other prohibits intercourse where the perpetrator is not related to the child but is in a position of authority over the victim.[62] The scope of these provisions is broad, much broader than the

traditional incest statute. The "family" provisions generally cover abuse by a parental figure, including a person in loco parentis, guardian, custodian, blood or affinity relation, household member and a person with supervisory or disciplinary control over the minor. In addition to a parental figure, some of these provisions might also encompass other family members or persons simply living in the household. The "position of authority" provisions include not only those in a position of familial authority, but also those with authority over the child by virtue of their occupational or professional status, such as teachers and doctors.

Twelve states have provisions which prohibit intercourse by a perpetrator who is a parent or legal guardian.[63] Ohio explicitly includes adoptive parents and stepparents in its provision.[64] Ohio and New Jersey also include persons in loco parentis in the group, and New Jersey and Kansas include foster parents. South Carolina and Florida prohibit sexual relations by a perpetrator in a position of "familial authority." A "household member" is included in the prohibited category in four states.[65] This last-mentioned broad category could include live-in boyfriends, step or adoptive siblings, or indeed simply a housemate.

Prohibitions against intercourse by perpetrators who are blood or affinity relations extend beyond the scope of some incest statutes. For example, the prohibition against affinity relations (those related by marriage) goes to the third or fourth degree, which may not be covered by incest laws. Of the six states which prohibit intercourse with blood or affinity relations, two include the third degree and two include the fourth degree.[66] New Hampshire does not specify any limit to the degree of blood or affinity relation prohibited. Oregon limits the prohibited class to brothers and sisters of the whole or half blood, as well as parents or stepparents.

Ten states prohibit sexual relations by perpetrators who have care and custody or supervision of a victim.[67] Just how broadly custodial or supervisory responsibility may be construed is unclear. Three states, Kansas, New Jersey and North Carolina, have expressly stated what might be considered "care and custody." For example, North Carolina prohibits intercourse by a perpetrator who is an agent or employee of any person or institution, be it private, chartiable or governmental. Kansas' provision is more explicit. It prohibits intercourse by a guardian, proprietor or employee of a foster home, orphanage, or public or private institution for the care and custody of minor children, to whose charge such child has been committed or entrusted by any court, probation officer, department of social and rehabilitation services or other agency under color of law.

The "position of authority" provisions are the broadest of the relationship provisions. They may be interpreted to protect children from a wide range of persons who have authority over the child, where that authority is used to coerce the child to submit. Persons covered by these

and not the other relationship provisions might include an older sibling, where, for example, the victim is three or four years old and the sibling is 10 or 11. The position of authority provisions may also cover a perpetrator who is a doctor, social worker, teacher, or other professionals, or even a neighbor or close friend of the family. In eight of nine states which have this provision, the protected age group includes only the teenage child.[68]

C. Penalties

The penalties for sexual intercourse with a child vary widely from state to state. Besides reflecting each state's individual philosophy regarding prison sentences, the penalty variations also are due to the different age categories of victims and relationships with the perpetrator. Thus, a comparative analysis of state penalty structures is difficult. Perhaps the key observation regarding penalties is that the prison sentences tend to be lower in the reform statutes than under the traditional statutory rape laws. Further, in states with tiered structures, the penalties are much lower when the victim is older.

Most states provide for a maximum of between 10 and 20 years imprisonment where the victim is young (i.e., under 11 or 12).[69] A number of states, however, still allow life imprisonment when a young child is involved;[70] three states still provide the death penalty.[71]

For adolescent or teenage victims where the perpetrator is older, the most common prison penalty is up to ten years.[72] However, some states provide for penalties of only 1-1½ years where teenage victims are involved, regardless of the perpetrator's age or when the perpetrator is older.[73] Some states provide such low penalties only where the teenage victim and perpetrator are close in age.[74] As indicated earlier, where a parent, family member, or person in a position of authority is the perpetrator, most states provide the same penalty for intercourse with a teenager as they do for intercourse with a young child by a stranger.[75]

IV. Sexual Contact

Reform statutes prohibiting "sexual contact," that is, the touching of the genitals or female breasts with intent to sexually arouse the child and/or actor, have long existed in the form of statutes prohibiting child "molestation," "lewd and lascivious" acts, or "indecent liberties." with children. Our research indicates that only Nebraska, Pennsylvania and the Virgin Islands have no statutory provision providing specific protection of children from sexual touching. However, Nebraska and Pennsylvania have sexual touching laws protecting any person (see chart at end of chapter).

A. Definitions of Prohibited Sexual Acts

As with the intercourse provisions, one difference between the traditional and reform legislation is that the sexual contact statutes

specifically define the prohibited acts.[76] Fifteen states and two territories retain the old-fashioned language,[77] eleven of them without defining those terms. The remaining four states have defined the older language as the handling, feeling or fondling of the genitals or intimate parts of a child, usually under the age of 14, in a manner not amounting to a full sexual assault.[78] These provisions are thus similar to the new sexual contact statutes, which generally prohibit any touching of the intimate or sexual parts, or the clothing covering them, for the purpose of sexual arousal or gratification.[79] Some states also define with precision exactly which organs are considered intimate.[80]

While the sexual contact laws provide specific definitions of the prohibited acts, they are somewhat narrower than some of the older statutes, which also cover solicitation and other non-contact forms of sexual approach.[81]

B. Degrees of Prohibited Acts

1. Tiered Structure and Age Differential Between Victim and Perpetrator

Many of the new sexual contact provisions use the tiered structure found in the intercourse provisions. Some also include an age differential between the victim and the perpetrator, a relationship requirement, or both. States with tiered intercourse provisions do not necessarily tier their sexual contact provisions or do not tier them along the same victim ages, and vice versa.[82] Eighteen states, the District of Columbia, American Samoa, Guam, and Puerto Rico do not tier their sexual contact statutes, but prohibit touching with a child below a specified age, usually 13, 14 or 16.[83] Twenty-five states have the new sexual contact provisions structured in two or more tiers based on several age categories of the victim.[84]

A number of sexual touching statutes also utilize an age differential between the victim and perpetrator.[85] Not all of the age differential provisions, however, are part of a tiered structure. For example, Iowa has only one sexual contact provision, protecting a victim under 14 from a perpetrator 18 or older. An example of a tiered structure with an age differential can be found in Indiana, which prohibits sexual contact by a perpetrator of any age with a victim under 12, and sexual contact by a perpetrator age 16 or over with a victim 12, 13, 14, or 15. Four states specifically provide an affirmative defense where the victim is 14 or older and the perpetrator is less than four or five years older than the victim,[86] or where the perpetrator is under 16.[87] The purpose of these statutes would appear to be the protection of the teenager from older perpetrators while not penalizing sexual contact when the perpetrator and victim are teenagers close in age.

2. Relationship Between Victim and Perpetrator

There are ten states which have relationship provisions in their sexual contact statutes.[88] These provisions prohibit sexual contact by a perpetrator who is a: 1) guardian;[89] 2) person responsible for the child's general supervision;[90] 3) member of the household;[91] 4) blood or affinity relation;[92] 5) person in a position of authority;[93] 6) parent;[94] 7) foster parent; 8) person with supervisory or disciplinary power by virtue of legal, professional or occupational status; or 9) person in loco parentis. Only New Jersey includes the last three categories. Seven of these ten states protect the teenage child from sexual contact by a perpetrator in a prohibited relationship;[95] Connecticut and Colorado protect victims under 18, and Kansas specifies no age. Minnesota combines an age differential with a position of authority. New Jersey's statute possesses all of the reform aspects, including tiered structure, age differential and relationship provisions, with graduated penalties.[96]

C. Penalties

The penalties for sexual contact are, on the average, much lower than penalties for intercourse. The maximum penalties average five to 15 years, with variables such as the use of force,[97] or second offenses,[98] increasing the penalties. As is the case with the intercourse provisions, sexual contact between a teenage victim and a perpetrator related to or in a position of authority over the victim generally is punished as severely as sexual contact with a young child by a stranger-perpetrator,[99] although sometimes it is less.[100] In Connecticut, New Hampshire, and North Dakota, sexual contact between a teenage victim and someone in a familial or authoritarian position over him or her is punishable by a jail sentence of only one year or less.

V. Conclusion

In summary, the major trends in child sexual abuse criminal legislation include specifically defining the prohibited acts, establishing a tiered structure of offenses with graduated penalties based on the age of the victim and/or perpetrator, and protecting children from abuse by family members or others in a position of authority over the child.

Like the original statutory rape laws, the primary purpose of the new statutes is to protect children from harm resulting from sexual abuse. However, the new laws expand the coverage of victims to include teenagers as well as very young children. In many states special protection is afforded the teenager where the perpetrator is older or in a particular relationship of authority with the child.

The laws protecting teenagers from older perpetrators demonstrate legislative interest in providing protection of the teenage child, while not punishing sexual activities between adolescents close in age. Thus, unlike the original statutory rape laws, the new statutes do not seek to establish a moral standard of preserving the virginity or chastity of the adolescent girl or of condemning pre-marital sex.

Special prohibitions against sexual abuse by family members or others in positions of authority indicate new legislative awareness that teenagers may consent when sexually approached by someone who has power or control over their lives. This awareness parallels the growing recognition that most sexual assaults upon children are perpetrated by acquaintances, friends and family members.

Thus, the reform statutes are a clear improvement over both the original and more recent statutory rape laws and child molestation provisions. However, as might be expected when states begin reforming their laws, certain variations exist from state to state. For example, there is a lack of uniformity with respect to the upper age limit of the child victim; the limit ranges from age 11 to 17. Further, some of the new statutes continue to punish voluntary intercourse between teenagers close in age, although the penalties usually are minimal.

Perhaps the most significant variation in the reform statutes can be found in the penalty structures. For example, for sexual intercourse with a young girl, some states provide up to life imprisonment or death, while others provide only one to five years imprisonment. Penalties for intercourse with teenagers also vary from as low as one year to up to 20 years imprisonment.

Because of the numerous variations, it is difficult to point to one statute as a reform model. However, New Jersey's statute deserves special mention because it represents an effort toward comprehensive protection of children from sexual abuse. It has a tiered structure for both sexual contact and intercourse, protecting children in several age categories up to the age of 18. It provides special protection for the teenager from abuse by perpetrators who are older or in several broad positions of authority. The penalties are reasonable and the prohibited acts are specifically delineated. (for a complete breakdown of New Jersey's provisions and those of other states, see the chart at the end of this chapter).

Footnotes

1. See Fraser, A Pragmatic Alternative to Current Legislative Approaches to Child Abuse, 12 Am. Crim. L. Review 103, n.1 (1974). According to Fraser, 40 states have such provisions and are important for use in criminal prosecutions for parental physical abuse because they provide greater protection of children by covering less serious conduct than traditional assault laws.

2. Child Sexual Abuse: Incest, Assault and Exploitation, National Center on Child Abuse and Neglect (Aug. 1978); L. Berliner and D. Stevens, Advocating for Sexually Abused Children in the Criminal Justice System, in Sexual Abuse of Children: Selected Readings 47, 48, National Center on Child Abuse and Neglect (Nov. 1980); S. Sgroi, Introduction: A National Needs Assessment for Protecting Child Victims of Sexual Assault in Sexual Assault of Children and Adolescents xv, xix, xx (1978); V. DeFrancis, Protecting the Child Victim of Sex Crimes, at 3 (1969); N. Groth, Guidelines for the Assessment and Management of the Offender, in Sexual Assault of Children and Adolescents 25, 36, 38 (1978).

3. K. MacFarlane, Foreword, in Child Sexual Abuse: Legal Issues and Approaches i, ii, National Legal Resource Center for Child Advocacy and Protection, American Bar Association (Sept. 1980).

4. At least twelve states and the District of Columbia require immediate referral by CPS to the legal system. The states are: Ariz., Hawaii, Iowa, Kan., Ky., La., Md., Mont., Okla., Tex., Utah, and Va.

5. For example, Sacramento, California and Olathe, Kansas have established pre-trial diversion procedures for intra-family offenders in cooperation with a local sexual abuse treatment program. Other special programs will be identified and described in a forthcoming ABA publication.

6. See, e.g., a description of such procedures in L. Berliner and D. Stevens, Advocating for Sexually Abused Children, supra note 1.

7. L. Bienen, Rape III - National Developments in Rape Reform Legislation, [hereinafter Bienen, Rape III] Women's Rights L. Rep., at 34 (Forthcoming 1981).

8. Id.

9. Id. at 35.

10. Id. at 36.

11. See, e.g., McCall v. Commonwealth, 192 Va. 422, S.E.2d 140 (1961); Strawderman v. Commonwealth, 200 Va. 855, 108 S.E.2d 376 (1959) (Carnal knowledge defined as sexual intercourse); Miller v. State, 16 Ala. App. 534, 79 So. 314 (1918) (Carnal abuse defined as injury to genital organs).

12. In an 1895 decision of the California Supreme Court interpreting the purpose of California's statutory rape law (prohibiting sexual intercourse with females under 14), the court stated that the "obvious" purpose of the law is:

> The protection of society by protecting from violation the virtue of young and unsophisticated girls....It is the insidious approach and vile tampering with their persons that primarily undermines the virtue of young girls, and eventually destroys it....

People v. Verdegreen, 106 Cal. 211, 214-215, 39 P. 607, 608-609 (1895).

13. Bienen, Rape III, supra note 7, at 37.

14. Id.

15. Michael M. v. Superior Court of Sonoma Cty., __ U.S. __, 101 S. Ct. 1200 (1981).

16. Id.

17. Id., 101 S. Ct. at 1217 (Brennan, White and Marshall dissenting).

18. Id., 101 S. Ct. at 1217-1218.

19. L. Bienen, Rape IV Chart, Women's Rights L. Rep., at ____ (Forthcoming 1981).

20. See the legislative history of Massachusetts Laws c. 459, sec. 4, of the Acts of 1980, amending M.G.L. ch. 265; and the legislative history of Ill. Ann. Stat. ch. 38, §§11-3 and 11-4 (Smith-Hurd 1979). But see the legislative history of Ohio Rev. Code Ann. §2907.04 (Page 1975).

21. Ala., Fla., Miss., Va. See accompanying chart for complete statutory references of these and other states listed below.

22. Alaska, Ariz., Conn., Del., Fla., Ill., Iowa, Kansas, Ky., La., Me., Md., Mo., Mont., N.J., N.Y., N.C., N.D., Ohio, Or., Pa., Vt., Wash., W.Va., Wis., American Samoa.

23. Cal., Colo., Hawaii, Ga., Idaho, Ind., Mich., Minn., Neb., Nev., N.H., N.M., Okla., R.I., S.C., S.D., Tenn., Utah, Wyo., Guam, P.R.

24. Some of the states defining "deviate sexual intercourse" in that manner are Hawaii, Ill., Mo., N.Y., V.I.

25. Alaska, Ariz., Ark., Cal., Colo., Conn., Del., D.C., Fla., Hawaii, Ill., Ind., Iowa, Kan., Ky., La., Me., Md., Mich., Minn., Mo., Mont., Neb., Nev., N.H., N.M., Okla., R.I., S.C., S.D., Tenn., Vt., Utah, Wash., W.Va., Wis., Wyo., American Samoa, and P.R.

26. See Alaska, Ariz., Ark., Colo., Conn., Del., Ind., Iowa, La., Mich., Minn., Mont., Neb., Nev., N.H., N.J., N.M., N.D., Ohio, Penn., R.I., S.C., Tenn., Vt., Wash., W.Va., Wis.

27. Cal., Colo., D.C., Hawaii, Ind., Mich., Neb., Nev., N.H., N.M., R.I., S.C., S.D., Tenn., Utah, Wyo., P.R.

28. Michigan and New Mexico also protect children above age 12, only where the perpetrator is in a position of authority.

29. See, e.g., Hawaii, Minn., Mich., and N.J.

30. Ga., Hawaii, Idaho, D.C., Vt. See the chart at the end of this chapter.

31. See, e.g., the legislative history of Ill. Ann. Stat. ch. 38, §11-3 (Smith-Hurd 1979).

32. Ariz., Mass., N.D., Utah, Wis., V.I.

33. See notes 24-26 below.

34. Ala., Ark., Cal., Fla., Ill., Ind., Iowa, Ky., La., Me., Md., Minn., Miss., Nev., N.J., N.Y., Ohio, Okla., Or., R.I., S.C., Va., Wash., Wyo., W.Va.

35. Alaska, Colo., Conn., Fla., Iowa, Mich., Minn., N.H., N.J., N.M., Ohio, Or., S.C., Tenn., Wyo. Six of these states, Colo., Conn., Mich., N.H., N.M. and Tenn. tier their provisions based only upon a relationship between the victim and the perpetrator.

36. Alaska, Fla., Iowa, Minn., N.J., Ohio, Or., S.C., Wyo.

37. See Ala., Alaska, Ark., Cal., Fla., Ill., Ind., Ky., Me., Miss., Mo., Neb., N.Y., Ohio, Okla., Or., Pa., R.I., Wash., W.Va.

38. Minn., La., and Tex. have a two year differential as part of an affirmative defense.

39. Minn., Mont., S.C., Tenn., Va. all have three year differentials. Oregon has a three year differential as an affirmative defense.

40. Colo., Del., Md., Minn., N.J., N.C., Wyo., all have four year differentials.

41. California. Note that Iowa has a six year time span.

42. See Alaska, Ark., Cal., Fla., Ind., Iowa, Ky., La., Me., Miss., Mont., Nev., N.Y., Ohio, Okla., R.I., S.C., Tenn., Va.

43. Louisiana and Maine.

44. California.

45. Ala., Alaska, Ark., Cal., Colo., Del., Fla., Ill., Ind., Iowa, Ky., La., Me., Md., Minn., Miss., Mo., Mont., Neb., Nev., N.J., N.Y., N.C., Ohio, Okla., Pa., R.I., S.C., Tenn., Tex., Va., Wash., W.Va., Wyo.

46. Alaska, Colo., Del., Ill., Md., Minn., Mont., Neb., N.C., Pa., Wash., W.Va., Wyo.

47. Ala., Ind., Iowa, La., Me., N.J., Ohio, R.I., Tenn., Va.

48. Florida and Mississippi. In Mississippi, for example, consenting carnal knowledge with a child under 12 years of age by a perpetrator 18 or older is a criminal offense punishable by death or life imprisonment. On the other hand, consenting carnal knowledge with a previously chaste victim of 12 to 18 years of age is a criminal offense regardless of the age of the perpetrator. The penalty in this case, however, is a prison term of only six months to five years.

49. For example, in N.C., Neb., Tenn., Va., Wash., and W.Va., intercourse is only prohibited with a minor where the perpetrator is older.

50. See, e.g., Ariz., Ark., Cal., Del., D.C., Idaho, Fla., Kan., Mass., Miss., Mo., (anal and oral only), Mont., N.H., N.Y., N.D., Or., Pa. (oral and anal only), S.D., Utah, Vt., Wis. Many of these provisions have very low maximum penalties and some are classified as misdemeanors (see chart at the end of this chapter). See Ariz. - 1½ yrs.; Ark. - 90 days; Cal. - 1 yr.; Mo. - 1 yr.; N.Y. - 1 yr.; N.D. - 1 yr.

51. Ill., Mo., Utah and Va. See chart at the end of this chapter for the exact provisions. The penalties for this crime are low: Ill. - 1 yr.; Mo. - 1 yr.; Utah - 6 mos.; Va. - $100 fine.

52. Committee Comments, Ill. Stat. Ann. ch. 38, §11-5 (Smith-Hurd 1979).

53. Id.

54. For an in-depth explanation of which states fall into each category, see text infra, at 8.

55. Alaska, Colo., Conn., Fla., Iowa, Kan., Mich., Minn., N.H., N.J., N.M., N.C., Ohio, Or., S.C., Tenn., Wyo. But note that North Dakota only has a relationship provision for sexual contact, and not for sexual intercourse.

56. The age of the protected victims in these relationship provisions is as follows: Alaska - under 18; Colo. - under 18; Conn. - under 18; Fla. - between 11 and 18; Iowa - 14 or 15; Mich. - 13, 14, or 15; Minn. - 13, 14, or 15; N.H. - 13, 14, or 15; N.M. - 13, 14, or 16; N.D. - 15 or older; Or. - under 16; S.C. - 14 or 15; Tenn. - 13, 14, or 15. N.J. has two separate provisions, one for teenagers age 13, 14 or 15, and one for teenagers age 16 or 17.

57. Oregon protects any victim under age 16.

58. Alaska, Colo., and Conn. protect any victim under age 18.

59. Child Sexual Abuse: Incest, Assault and Sexual Exploitation, supra note 1; J. Bulkley and H. Davidson, Child Sexual Abuse - Legal Issues and Approaches, National Legal Resource Center for Child Advocacy and Protection, American Bar Association, at 3 (1980).

60. N. Groth, Patterns of Sexual Assault Against Children and Adolescents, in Sexual Assault of Children and Adolescents 2, 19 (1978). Frequently, however, the sexual abuse is never revealed. Or, it may be revealed much later when the child has become an adult. This is why the reported incidence of this type of abuse often is described as only the "tip of the iceberg." Child Sexual Abuse: Incest, Assault and Sexual Exploitation, supra note 1, at 3.

61. South Carolina punishes sexual intercourse with a child under 11 by a perpetrator 3 or more years older with a term of up to 30 years imprisonment; sexual intercourse between a perpetrator of the prohibited relationship and a victim age 14 or 15 carries a 20 year sentence.

Iowa sets the maximum penalty at a term of up to 25 years imprisonment for sexual intercourse with a child under 12 by a perpetrator of any age, and up to 10 years where the perpetrator is of the prohibited relationship and the victim is age 14 or 15.

Only Florida provided a slightly more substantial difference. Sexual intercourse with a child under 11 by a perpetrator age 18 or older is punished by life imprisonment or death. Where the victim is under 11 and the perpetrator is under 18, the term is 30 years to life. Where the perpetrator is of the prohibited relationship, the term is 30 years or less.

62. For an in-depth explanation of which states fall into each category, see text, infra at 8.

63. Alaska, Conn., Colo., Fla., Kan., N.J., N.C., N.D., (in the sexual contact provision only), Ohio, Or., S.C., (includes anyone in "familial authority"), and Tenn.

64. Oregon also explicitly includes stepparents.

65. Iowa, Mich., N.H., and N.J.

66. New Jersey and Tennessee prohibit sexual intercourse between parties related to the third degree of blood or affinity. Iowa and Michigan prohibit sexual intercourse between parties related to the fourth degree of blood or affinity.

67. Alaska, Conn., Colo., Fla., Kan., N.J., N.C., Ohio, S.C., and Tenn.

68. In Florida, the victim must be between 11 and 18; in Iowa, 14 or 15; in Mich., 13, 14, or 15; in Minn., 13, 14, or 15; in N.H., 13, 14, or 15; in N.M., 13, 14, or 15; in S.C., 14 or 15; and in Tenn., 13, 14, or 15.

Note that Minnesota places a further restriction on criminality by requiring that the related perpetrator be four or more years older than the victim. Tennessee restricts criminality in the same fashion, but requires that the perpetrator be only three or more years older than the victim.

Wyoming is the only state with the "position of authority" provision which does not provide a maximum or minimum requirement for the age of the victim or the perpetrator.

69. See, e.g., Ala., Ga., Ill., Kan., Me., Md., Mich., Mo., Mont., N.H., N.J., N.D., Or., Tex., Va., W.Va., Wis., Wyo., American Samoa.

70. See D.C., Fla., Idaho, Kan., Ky., La., Mass., Mich., Miss., N.M., N.C., R.I., Tenn., Utah, Va.

71. Fla., Okla., Miss.

72. See, e.g. Ala., Colo., Conn., Hawaii, Iowa, Minn., Mo., Nev., N.H., N.J., N.Y., Ohio, Pa., S.D., Tenn., Wis.

73. Ariz., Cal., Me., Md., N.D., Or., Wyo.

74. See, e.g., Ill., Mo.

75. See text, infra at 7.

76. See text, supra, at 3-4.

77. Ala., Ariz., Cal., D.C., Fla., Ga., Idaho, Ill., Iowa, Kan., La., N.C., Okla., Vt., Va., Guam, P.R.

78. The four states that so define the prohibited act are Fla., Iowa, Okla., and Va.

79. The states which define sexual contact are: Ala., Alaska, Ariz., Ark., Colo., Conn., Del., Hawaii, Me., Md., Mich., Minn., Mo., Mont., N.H., N.J., N.M., N.Y., N.D., Ohio, Or., R.I., S.D., Tenn., Utah, Wash., Wis., Wyo., and American Samoa.

80. See the definition of sexual contact in Mich., Minn., Mo., N.Y., N.M., R.I., S.F., Tenn., Wisc., and American Samoa. For example, Tennessee defines "intimate parts" as the genital area, groin, inner thigh, buttocks or breast. Minnesota defines it the same way.

81. See Ga., La., Okla., Va., and Iowa.

82. See Alaska, Ark., Cal., Fla., Iowa, La., Me., Md., Miss., Ohio., Okla., R.I., N.D., Va., Wash., American Samoa, Guam and P.R., which have tiered only their sexual intercourse provisions. Colo., Conn., Mass., Mont., N.M., and S.D. tier only their sexual contact provisions.

83. Ark., Cal., Fla., Ga., Iowa, Me., Md., Miss., N.Y., Okla., Va., Wash., American Samoa, Guam and Puerto Rico prohibit sexual touching with a child under 14; Alaska, Ohio, and R.I., under 13; Del., D.C., Idaho, Mont., N.C., and Vt., under 16; and La., under 17.

84. The following states have two-tiered structures: Ala., Colo., Conn., Hawaii, Ill., Ind., Kan., Mass., Mich., Mo., Mont., N.H., N.D., Ore., S.D., Tenn., W.Va., Wis., and Wyo.

The following states have three-tiered structures: Ariz., Ky., N.M., and N.Y. Minnesota has a four-tiered structure; New Jersey has five tiers.

Massachusetts and North Dakota do not have uppermost age limits on the victim, but rather make sexual contact criminal where the victim is 14 or over (Massachusetts) or 15 or older (North Dakota), albeit with a lesser penalty than sexual contact with a victim under age 14 or 15.

85. Ala., Alaska, Ark., Colo., Del., Hawaii, Ill., Ind., Iowa, La., Me., Md., Minn., Miss., Mont., N.C., Okla., S.D., Va., W.Va.

Note that Oklahoma has two separate age differentials based on the gender of the perpetrator.

86. Ky., N.Y., Or., and Tex., provide an affirmative defense where the perpetrator is less than four or five years older than the victim.

87. West Virginia provides an affirmative defense where the perpetrator is under 16.

88. Colo., Conn., Kan., Mich., Minn., N.H., N.J., N.M., N.D., and Tenn.

89. Colo., Conn., Kan., N.J., and N.D.

90. Colo., Conn., N.J., and N.D.

91. Mich., N.H., and N.J.

92. Mich., N.H., N.J., and Tenn.

93. Mich., Minn., N.H., N.J., N.M., and Tenn. ("Custodial or official authority"

Note that Minnesota includes the additional requirements that the perpetrator be four or more years older than the victim in addition to the position of authority requirement.

94. North Dakota is the only state that specifically prohibits sexual contact by a parent.

95. Mich., Minn., N.H., N.J., N.M., N.D., and Tenn.

96. New Jersey has one provision making sexual contact criminal between a victim who is less than 13 and a perpetrator four or more years older. That crime is punishable by a five to ten year jail sentence. Thirteen, fourteen, and 15 year olds are protected from perpetrators who are related to them by blood or affinity to the third degree, from perpetrators with supervisory or disciplinary power over the victim by virtue of the perpetrator's legal, professional or occupational status (this would include teachers, social workers, doctors, etc.) and from foster parents, guardians or anyone in loco parentis within the household. When a perpetrator in one of the above relationships sexually contacts a 13, 14, or 15 year old, the crime is punishable by 3 to 5 years in jail. If that same 13, 14, or 15 year old has sexual contact with a stranger who is 4 or more years older, the penalty is only a year and one-half imprisonment. Sexual contact of a 16 or 17 year old victim by a member of the victim's household with supervisory of disciplinary power over the victim may also be punished by a one and one half year jail te

97. Colo., Ind., and American Samoa increase the penalty where force is used.

98. Ala., Alaska, Mass., and Wyo., increase the penalty for second offenders. Mass., and Wyo. increase the penalty with a maximum possible life sentence.

99. See, e.g., Minn., N.J., N.M., and Tenn.

100. See Colorado and North Dakota.

CHART 1a

Basic Elements of Criminal Sexual Intercourse Provisions Dealing with Children

KEY

"V, A, O" in the TYPE OF INTERCOURSE Column mean the following:

V - Vaginal
A - Anal
O - Oral

The symbols $>$, $<$, $\geq$, $\leq$ mean as follows:

$>$ - greater than

$<$ - less than

$\geq$ - equal to or greater than

$\leq$ - equal to or less than

In the PENALTIES Column, the money figures represent the maximum fine and the number of years refer to the length of imprisonment.

STATE	CITATION	TYPE OF INTERCOURSE	VICTIM	AGE OF PERPETRATOR		PERPETRATOR'S RELATIONSHIP WITH VICTIM	PENALTIES
				SPECIFICALLY STATED	YEARS OLDER THAN VICTIM		
Alabama[9]	Ala. Code §13-1-133 (1975)	"Carnal Knowledge"	<12				≥10 yrs.
	Ala. Code §13-1-134 (1975)	"Carnal Knowledge"	12, 13 14, 15	≥16			2-10 yrs.
Alaska	Alaska Stat. §11.41.410 (Supp. 1980)	V, A, O	<13	≥16			≤20 yrs. ≤$50,000
	Alaska Stat. §11.41.410 (Supp. 1980)	V, A, O	<18	≥18		Parent (whether child is legitimate or not), Adoptive Parent, Step-parent, or otherwise entrusted to his care by authority of law.	≤20 yrs. ≤$50,000
	Alaska Stat. §11.410.440 (Supp. 1980)	V, A, O	13, 14 15	>16			≤5 yrs. ≤$50,000
Arizona	Ariz. Rev. Stat. Ann. §13-1405 (1978)	V, A, O	<15				7 yrs. ≤$150,000
	Ariz. Rev. Stat. Ann. §13-1405 (1978)	V, A, O	15, 16 17				1½ yrs. ≤$150,000
	Ariz. Rev. Stat. Ann. §13-1411 (1978)	"Sodomy"	<15				5 yrs. ≤$50,000
Arkansas	Ark. Stat. Ann. §41-1804 (1975)	V, A, O	<14	≥18			1-5 yrs.
	Ark. Stat. Ann. §41-1806 (1975)	V, A, O	<16	≥20			[8] ≤1 yr. ≤$1,000
	Ark. Stat. Ann. §41-1807 (1975)	V, A, O	<16				[8] ≤90 days ≤$500

STATE	CITATION	TYPE OF INTERCOURSE	VICTIM	AGE OF PERPETRATOR		PERPETRATOR'S RELATIONSHIP WITH VICTIM	PENALTIES
				SPECIFICALLY STATED	YEARS OLDER THAN VICTIM		
California	Cal. Penal Code §261.5 (West Supp 1980)	V	<18				≤1 yr.
	Cal. Penal Code §286 (West Supp 1980)	A	<18				≤1 yr.[8]
	Cal. Penal Code §286 (West Supp 1980)	A	<16	>21			Felony
	Cal. Penal Code §286 (West Supp 1980)	A	<14		≥10 yrs.		3, 6 or 8 yrs.
	Cal. Penal Code §288 (Deering Supp. 1980)	O	<18				≤1 yr.[8]
	Cal. Penal Code §288 (Deering Supp. 1980)	O	<16	>21			Felony
	Cal. Penal Code §288 (Deering Supp. 1980)	O	<14		≥10 yrs.		3, 6 or 8 yrs.
Colorado	Colo. Rev. Stat. §18-3-403 (1978)	V, A, O	<15		≥4 yrs.		≤10 yrs. ≤$30,000
	Colo. Rev. Stat. §18-3-403 (1978)	V, A, O	<18			Guardian or responsible for the general supervision of the victim's welfare.	≤10 yrs. ≤$30,000
Connecticut	Conn. Gen. Stat. §53a-71 (1979)	V, A, O	<15				1-10 yrs. ≤$5,000.
	Conn. Gen. Stat. §53a-71 (1979)	V, A, O	<18			Guardian or responsible for the general supervision of the victim's welfare.	1-10 yrs. ≤$5,000

STATE	CITATION	TYPE OF INTERCOURSE	VICTIM	AGE OF PERPETRATOR		PERPETRATOR'S RELATIONSHIP WITH VICTIM	PENALTIES
				SPECIFICALLY STATED	YEARS OLDER THAN VICTIM		
Delaware	Del. Code Ann. Tit. 11, §762 (1979)	V, A, O and Homosexual A, O	< 16		≥ 4 yrs.		7 yrs. such fines as the court deems proper.
	Del. Code Ann. Tit. 11, §763 (1979)	V, A, O	< 16				3-30 yrs.[2] Such fines as the court deems proper.
	Del. Code Ann. Tit. 11, §766 (1979)	Homosexual A, O	< 16				3-30 yrs. Such fines as the court deems proper
District of Columbia[9]	D.C. Code Ann. §22-3502 (1973)	O	< 16				≤ 20 yrs. ≤ $1,000
	D.C. Code Ann. §22-2801 - (1973)	"Carnal Knowledge"	< 16				≤ Life
Florida	Fla. Stat. Ann. §794.011 (Harrison's 1976)	V, A, O	≤ 11	≥ 18			Life or Death
	Fla. Stat. Ann. §794.011 (Harrison's 1976)	V, A, O	≤ 11	< 18			30 yrs. - life ≤ $15,000
	Fla. Stat. Ann. §794.011 (Harrison's 1976)	V, A, O	11, 12, 13, 14, 15, 16 17			Familial, custodial, or official authority over the victim.	[2] ≤ 30 yrs. ≤ $10,000
	Fla. Stat. Ann. §794.05 (Harrison's 1976)	"Carnal Intercourse"	≤ 18 and previous chaste character				[2] ≤ 15 yrs. ≤ $10,000
Georgia	Ga. Code Ann. §26-2018 (1978)	"Sexual Intercourse"	< 14				1-20 yrs.

STATE	CITATION	TYPE OF INTERCOURSE	VICTIM	AGE OF PERPETRATOR		PERPETRATOR'S RELATIONSHIP WITH VICTIM	PENALTIES
				SPECIFICALLY STATED	YEARS OLDER THAN VICTIM		
Hawaii	Haw. Rev. Stat. §707-731-734 (Supp. 1979 & 1976)	V, A, O	<14				[2] ≤10 yrs. ≤$10,000
Idaho	Idaho Code §18-6101 (1979)	"Sexual Intercourse"	<18				1 yr. life
Illinois	[3] Ill. Ann. Stat. ch. 38, §11-4 (Smith-Hurd 1979)	V, A, O	<16	≥17			4-15 yrs. ≤$10,000
	Ill. Ann. Stat. ch. 38, §11-5 (Smith-Hurd 1979)	V, A, O	<18	≥14			[8] ≤1 yr. ≤$1,000
Indiana	Ind. Code Ann. §35-42-4-3 (Burns Supp. 1977)	V, A, O	<12				[2] ≤10 yrs. ≤$10,000
	Ind. Code Ann. §35-42-4-3 (Burns Supp.(1977)	V, A, O	12, 13, 14, 15	≥16			[2] ≤3 yrs. ≤$10,000
Iowa	Iowa Code Ann. §709.3 (West Supp. 1980)	V, A, O	<12				≤25 yrs.
	Iowa Code Ann. §709.4 (West Supp. 1980)	V, A, O	<14				≤10 yrs. ≤$5,000
	Iowa Code Ann. §709.4 (West Supp. 1980)	V, A, O	14, 15			Members of same household, related by blood or affinity to the 4th degree, or in a position of authority over the victim.	≤10 yrs. ≤$5,000

STATE	CITATION	TYPE OF INTERCOURSE	VICTIM	AGE OF PERPETRATOR		PERPETRATOR'S RELATIONSHIP WITH VICTIM	PENALTIES
				SPECIFICALLY STATED	YEARS OLDER THAN VICTIM		
Iowa Continued	Iowa Code Ann. §709.4 (West Supp. 1980)	V, A, O	14, 15		≥6 yrs.		≤10 yrs. ≤$5,000
Kansas	Kan. Stat. Ann. §21-3503 (Supp. 1976)	V	<16				(1-5)-20 yrs. ≤$10,000
	Kan. Stat. Ann. §21-3504 (Supp. 1976)	V	<16			Guardian, proprietor, or employee of any foster home, orphanage, or other public or private institution for the care and custody of minor children.	(5-15)-life ≤$10,000
	Kan. Stat. Ann. §21-3506 (1974)	O, A	<16				(5-15)-life ≤$10,000
Kentucky	Ky. Rev. Stat. Ann. §§510.040 and 510.070 (1975)	V, A, O	<12				20 yrs. - life ≤$10,000
	Ky. Rev. Stat. Ann. §§510.050 and 510.080 (1975)	V, A, O	— <14	≥18,			5-10 yrs. ≤$10,000
	Ky. Rev. Stat. Ann. §510.060 and 510.090 (1975)	V, A, O	<16	≥21			1-5 yrs. ≤$10,000
Louisiana [2]	La. Rev. Stat. Ann. §42 (West Supp. 1980)	V, A	<12				[4] Life Imprisonment
	La. Rev. Stat. Ann. §80 (West Supp. 1980)	V, A, O	12, 13, 14, 15, 16 with consent	≥17	[5] ≥2 yrs.		≤10 yrs.
Maine	Me. Rev. Stat. tit. 17-A, §252 (Supp. 1979)	V, A, O	<14				≤20 yrs.

STATE	CITATION	TYPE OF INTERCOURSE	VICTIM	AGE OF PERPETRATOR		PERPETRATOR'S RELATIONSHIP WITH VICTIM	PENALTIES
				SPECIFICALLY STATED	YEARS OLDER THAN VICTIM		
Maine Continued	Me. Rev. Stat. tit. 17-A, §254 (Supp. 1979)	V	14, 15	≥19	≥5 yrs.		[8] ≤1 yr. ≤$1,000
Maryland	Md. Ann. Code art. 27, §§463, 464A (Supp. 1979)	V, A, O	≤14		≥4 yrs.		≤20 yrs.
	Md. Ann. Code art. 27, §464C (Supp. 1979)	V, A, O	14, 15		≥4 yrs.		[8] ≤1 yr. ≤$1,000
[9] Massachusetts	Mass. Ann. Laws ch. 265, §22A (Michie/ Law Co-op 1980)	Sexual intercourse or unnatural sexual intercourse	[2] ≤16				[1, 2] ≤Life
	Mass. Laws c. 459, sec. 4, of the Acts of 1980, amending M.G.L. ch. 265, §13B.	"Indecent assault and battery"	≤14				[1] 2½ - 10 yrs.
	Mass. Laws c. 459, sec. 5, of the Acts of 1980, amending M.G.L. ch. 265.	"Indecent assault and battery"	≥14				[1] 2½ - 5 yrs.
Michigan	Mich. Comp. Laws Ann. §750.520b (Supp. 1980)	V, A, O	≤13				≤Life
	Mich. Comp. Laws Ann. §750.520b (Supp. 1980)	V, A, O	13, 14 15			Household member, related by blood or affinity to the 4th degree, or is in a position of authority over the victim.	≤Life
[9] Minnesota	Minn. Stat. Ann. §609.342 (West Supp. 1980)	V, A, O	≤13		≥3 yrs.		≤20 yrs.

STATE	CITATION	TYPE OF INTERCOURSE	VICTIM	AGE OF PERPETRATOR		PERPETRATOR'S RELATIONSHIP WITH VICTIM	PENALTIES
				SPECIFICALLY STATED	YEARS OLDER THAN VICTIM		
Minnesota Continued	Minn. Stat. Ann. §609.344 (West Supp. 1980)	V, A, O	<13		≤3 yrs.		≤10 yrs.
	Minn. Stat. Ann. §609.344 (West Supp. 1980)	V, A, O	$ 13, 14 15		$ >4 yrs. 2-4 yrs.		≤10 yrs. ≤5 yrs.
	Minn. Stat Ann. §609.342 (West Supp. 1980)	V, A, O	13, 14, 15		>4 yrs.	In a position of authority over the victim.	≤20 yrs.
Mississippi	Miss. Code Ann. §97-3-65 (Supp. 1979)	"Carnal Knowledge"	<12	≥18			Death or Life imprisonment.
	Miss. Code Ann. §97-3-65 (Supp. 1979)	"Carnal Knowledge"	12	13, 14, 15, 16, 17			Terms of years to be determined in the discretion of the Court.
	Miss. Code Ann. §97-3-65 (Supp. 1979)	"Forcibly Ravishing"	≥12				Death or life imprisonment.
	Miss. Code Ann. §97-3-67 (Supp. 1979)	"Carnal Knowledge"	13, 14, 15, 16, 17 and previous chaste character		"Older" than victim		6 mo. - 5 yrs ≤$500
Missouri	Mo. Ann. Stat. §§566.030 and 566.060 (Vernon 1979)	V, A, O	<14				5-15 yrs.
	Mo. Ann. Stat. §566.040 and 566.070 (Vernon 1979)	V, A, O	14, 15				≤7 yrs. ≤$5,000
	Mo. Ann. Stat. §566.050 and 566.080 (Vernon 1979)	V, A, O	16	≥17			≤5 yrs. ≤$5,000

STATE	CITATION	TYPE OF INTERCOURSE	VICTIM	AGE OF PERPETRATOR		PERPETRATOR'S RELATIONSHIP WITH VICTIM	PENALTIES
				SPECIFICALLY STATED	YEARS OLDER THAN VICTIM		
Missouri Continued	Mo. Ann. Stat. §566.090 (Vernon 1979)	V	14, 15	<17			[8] ≤1 yr. ≤$1,000
	Mo. Ann. Stat. §566.090 (Vernon 1979)	A, O	17				[8] ≤1 yr ≤$1,000
Montana	Mont. Rev. Code Ann. (Crim. Code) §94-5-503 (1977)	V, A, O	<16				2-20 yrs.
	Mont. Rev. Code Ann. (Crim. Code) §94-5-503 (1977)	V, A, O	<16		≥3 yrs.		2-40 yrs.
	Mont. Rev. Code Ann. (Crim. Code) §94-5-505 (1977)	V, A, O Homosexual Intercourse	<16				≤20 yrs.
Nebraska	Neb. Rev. Stat. §28-319 (1979)	V, A, O	<16	≥19			1-50 yrs.
Nevada	Nev. Rev. Stat. §200.366 (1973)	V, A, O	<14				[4] Life
	Nev. Rev. Stat. §200.368 (1973)	V, A, O	<16	18, 19, 20			[6] 1 yr. $1,000
	Nev. Rev. Stat. §200.368 (1973)	V, A, O	<16	≥21			1-10 yrs.
New Hampshire	N.H. Rev. Stat. Ann. §632-A:2 (Supp. 1977)	V, A, O	<13				≤15 yrs. ≤$2,000

STATE	CITATION	TYPE OF INTERCOURSE	VICTIM	AGE OF PERPETRATOR		PERPETRATOR'S RELATIONSHIP WITH VICTIM	PENALTIES
				SPECIFICALLY STATED	YEARS OLDER THAN VICTIM		
New Hampshire Continued	N.H. Rev. Stat. Ann. §632-A:2 (Supp. 1977)	V, A, O	13, 14, 15			Member of same household, related by blood or affinity or in a position of authority over the victim.	≦ 15 yrs. ≦ $2,000
	N.H. Rev. Stat. Ann. §632-A:3 (Supp. 1977)	V, A, O	13, 14, 15				≦ 7 yrs. ≦ $4,000
New Jersey	N.J. Stat. Ann. §2C:14-2 (West 1979)	V, A, O	<13				10-20 yrs. ≦ $100,000
	N.J. Stat. Ann. §2C:14-2 (West 1979)	V, A, O	13, 14, 15			Foster parent, guardian, in loco parentis within the household, related by blood or affinity to the 3rd degree, supervisory or disciplinary power over the victim by virtue of the perpetrator's legal, professional or occupational status.	10-20 yrs. ≦ $100,000
	N.J. Stat. Ann. §2C:14-2 (West 1979)	V, A, O	16, 17			Member of victim's household with supervisory or disciplinary power over the victim.	5-10 yrs.
	N.J. Stat. Ann. §2C:14-2 (West 1979)	V, A, O	13, 14, 15		≧4 yrs.		5-10 yrs.
New Mexico	N.M. Stat. Ann. §30-9-11 (1980)	V, A, O	<13				Life ≦ $15,000
	N.M. Stat. Ann. §30-9-11 (1980)	V, A, O	13, 14, 15			Position of authority.	10-50 yrs. ≦ $10,000
[9] New York	N.Y. Penal Law §130.20 (McKinney 1975)	V	<17				[8] ≦ 1 yr. ≦ $1,000

STATE	CITATION	TYPE OF INTERCOURSE	VICTIM	AGE OF PERPETRATOR		PERPETRATOR'S RELATIONSHIP WITH VICTIM	PENALTIES
				SPECIFICALLY STATED	YEARS OLDER THAN VICTIM		
New York Continued	N.Y. Penal Law §130.25 and 130.40 (McKinney 1975)	V, A, O	≤17	≥21			≤4 yrs. ≤$5,000
	N.Y. Penal Law §130.30 and 130.45 (McKinney 1975)	V, A, O	≤14	≥18			≤7 yrs. ≤$5,000
	N.Y. Penal Law §§130.35 and 130.50 (McKinney 1975)	V, A, O	≤11				≤25 yrs. ≤$5,000
North Carolina	N.C. Gen. Stat. §§14-27.2 and 14-27.4 (Supp. 1979)	V, A, O [b]	≤13		≥4 yrs.		Life imprisonment
	N.C. Gen. Stat. §14-27.7 (Supp. 1979)	V, A, O				Parent, in custody of minor victim of any age, agent or employee of any person or institution whether such institution is private, charitable, or governmental.	2-15 yrs.
North Dakota	N.D. Cent. Code §12.1-20-03 (Supp. 1979)	V, A, O	≤15				≤20 yrs. ≤$10,000
	N.D. Cent. Code §12.1-20-05 (Supp. 1979)	V, A, O	≥15				[8] ≤1 yr. ≤$1,000
Ohio	Ohio Rev. Code Ann. §2907.02 (Page Supp. 1980)	V, A, O	≤13				[2] (4-7)-25 yrs. ≤$10,000
	Ohio Rev. Code Ann. §2907.04 (Page 1975)	V, A, O	12, 13, 14, 15	≥18	≥4 yrs.		(1-3)-10 yrs. ≤$5,000

STATE	CITATION	TYPE OF INTERCOURSE	VICTIM	AGE OF PERPETRATOR		PERPETRATOR'S RELATIONSHIP WITH VICTIM	PENALTIES
				SPECIFICALLY STATED	YEARS OLDER THAN VICTIM		
Ohio Continued	Ohio Rev. Code Ann. §2907.04 (Page 1975)	V, A, O	12, 13, 14, 15	≥18	<4 yrs.		$ ≤6 months ≤$1,000
	Ohio Rev. Code Ann. §2907.03 (Page 1975)	V, A, O				Natural or adoptive parent, stepparent, guardian, custodian, person in loco parentis.	(1-3) 10 yrs. ≤$5,000
Oklahoma	Okla. Stat. Ann. tit. 21 §1114, (West 1958)	"Sexual Intercourse"	<14	>18			Death or imprisonment of not less than 5 years.
	Okla. Stat. Ann. tit. 21, §§1111, 1112 (West 1958)	"Sexual Intercourse"	14, 15	>18			1-15 yrs.
	Okla. Stat. Ann. tit. 21, §1111, 1112 (West 1958)	"Sexual Intercourse"	16, 17 and previous chaste character.	>18			1-15 yrs.
Oregon	Or. Rev. Stat. §§163.355 and 163.385 (1977)	V, A, O	--- <16		$ ≥3		≤5 yrs. ≤$2,500
	Or. Rev. Stat. §§163.365 and 163.395 (1977)	V, A, O	<14		$ ≥3		≤10 yrs. ≤$2,500
	Or. Rev. Stat. §§163.375 and 163.405 (1977)	V, A, O	≤12				≤20 yrs. ≤$2,500
	Or. Rev. Stat. §§163.375 and 163.405 (1977)	V, A, O	≤16			Brother or Sister (of the whole or half blood), parent or step-parent.	≤20 yrs. ≤$2,500
	Or. Rev. Stat. §§163.435 (1977)	V, A, O	≤18	≥18			$ ≤1 yr. ≤$1,000

STATE	CITATION	TYPE OF INTERCOURSE	VICTIM	AGE OF PERPETRATOR		PERPETRATOR'S RELATIONSHIP WITH VICTIM	PENALTIES
				SPECIFICALLY STATED	YEARS OLDER THAN VICTIM		
Oregon Carnuus	Or. Rev. Stat. §163.445 (1977)	V, A, O	<18				8 ≦ 30 days ≦ $250
Pennsylvania	18 Pa. Cons. Stat. §3122 (Purdon Supp. 1979)	V, A, O	<14	≧18			≦10 yrs.
	18 Pa. Cons. Stat. §3123 (Purdon 1973)	O, A	<16				≦10 yrs.
Rhode Island	R.I. Gen. Laws §11-37-2 (Supp. 1979)	V, A, O	<13				10 yrs.-life
	R.I. Gen. Laws §11-37-6 (Supp. 1979)	V, A, O	13, 14, 15	>18			≦5 yrs.
South Carolina	S.C. Code §16-3-655 (Supp. 1979)	V, A, O	<11		≧3 yrs.		≦30 yrs.
	S.C. Code §16-3-655 (Supp. 1979)	V, A, O	11, 12, 13		≧3 yrs.		≦20 yrs.
	S.C. Code §16-3-655 (Supp. 1979)	V, A, O	14, 15			Familial, Custodial, or Official Authority.	≦20 yrs.
	S.C. Code §16-3-655 (Supp. 1979)	V, A, O	14, 15		"Older than the victim"		≦20 yrs.
South Dakota	S.D. Compiled Laws Ann. §22-22-1 (1979)	V, A, O	<15				≦10 yrs. ≦$10,000
Tennessee	Tenn. Code Ann. §39-3703 (Supp. 1978)	V, A, O	≦12				10 yrs.-life

STATE	CITATION	TYPE OF INTERCOURSE	VICTIM	AGE OF PERPETRATOR		PERPETRATOR'S RELATIONSHIP WITH VICTIM	PENALTIES
				SPECIFICALLY STATED	YEARS OLDER THAN VICTIM		
Tennessee Continued	Tenn. Code Ann. §39-3703 (Supp. 1978)	V, A, O	13, 14, 15		≥3 yrs.	Related by blood or affinity to the third degree, position of custodial or official authority.	10 yrs.-life
	Tenn. Code Ann. §39-3705 (Supp. 1978)	V, A, O	13, 14, 15		≥3 yrs.		2-10 yrs.
Texas	Tex. Penal Code Ann. tit. 5, §§21.09 and 21.10 (Vernon Supp. 1979)	V, A, O	<17 [5]		≥2 yrs. [5]		2-20 yrs. [2] ≤$10,000
Utah	Utah Code Ann. §76-5-401 (Supp. 1979)	V	<16		>3 yrs.		≤5 yrs. ≤$5,000
	Utah Code §76-5-401 (Supp. 1979)	V	<16		≤3 yrs.		≤6 mo. [8] ≤$299
	Utah Code Ann. §§76-5-402 and 76-5-403 (Supp. 1979)	V, A, O	<14				5 yrs.-life ≤$10,000
	Utah Code Ann. §§76-5-402 and 76-5-403 (Supp. 1979)	V, A, O	≥14				1-15 yrs. ≤$10,000
Vermont	Vt. Stat. Ann. tit. 13, §3252 (Supp. 1979)	V, A, O	<16				≤20 yrs. [2] ≤$10,000
Virginia	Va. Code §18.2-61 (1975)	"Carnal Knowledge"	<13				5 yrs.-life

STATE	CITATION	TYPE OF INTERCOURSE	VICTIM	AGE OF PERPETRATOR		PERPETRATOR'S RELATIONSHIP WITH VICTIM	PENALTIES
				SPECIFICALLY STATED	YEARS OLDER THAN VICTIM		
Virginia Continued	Va. Code §18.2-63 (1975)	"Carnal knowledge"	13, 14		≥3 yrs.		≤5 yrs. ≤$1,000
	Va. Code §18.2-63 (1975)	"Carnal knowledge"	13, 14		<3 yrs.		≤$100
Washington	Wash. Rev. Code Ann. §9A.44.070 (Supp. 1980)	V, A, O	<11	>13			[4] ≥20 yrs. ≤$10,000
	Wash. Rev. Code Ann. §9A.44.080 (Supp. 1980)	V, A, O	11, 12, 13	>16			≤10 yrs. ≤$10,000
	Wash. Rev. Code Ann. §9A.44.090 (Supp. 1980)	V, A, O	14, 15	>18			≤5 yrs. ≤$5,000
West Virginia	W.Va. Code §61-8B-3 (1977)	V, A, O	<11	≥14			10-20 yrs. ≤$10,000
	W.Va. Code §61-8B-5 (1977)	V, A, O	<16	≥16	≥4 yrs.		1-5 yrs. ≤$10,000
Wisconsin	Wisc. Stat. Ann. §940.225 (West Supp. 1979)	V, A, O	<12				≤20 yrs.
	Wisc. Stat. Ann. §940.225 (West Supp. 1979)	V, A, O	[7] 12, 13, 14, 15, 16, 17				≤10 yrs. ≤$10,000
Wyoming	Wyo. Stat. §6-4-303 (1977)	V, A, O	<12		≥4 yrs.		[1] 1-20 yrs.
	Wyo. Stat. §6-4-303 (1977)	V, A, O				Position of authority.	[1] 1-20 yrs.
	Wyo. Stat. §6-4-305 (1977)	V, A, O	<16		≥4 yrs.		≤1 yr.

STATE	CITATION	TYPE OF INTERCOURSE	VICTIM	AGE OF PERPETRATOR		PERPETRATOR'S RELATIONSHIP WITH VICTIM	PENALTIES
				SPECIFICALLY STATED	YEARS OLDER THAN VICTIM		
American Samoa	A.S. Code tit. 15, §§1103 and 1105 (Supp. 1980)	V, A, O	<14				2 5-15 yrs.
	A.S. Code tit. 15, §§1104 and 1106 (Supp. 1980)	V, A, O	<14				2 ≦7 yrs. ≦$5,000
Guam	Guam Penal Code §261 (1970)	"Sexual Intercourse"	<16				1-30 yrs.
Puerto Rico	P.R. Laws Ann. tit. 33, §4061 (Supp. 1980)	"Carnal Intercourse"	<14				1-25 yrs.
	P.R. Laws Ann. tit. 33, §4065 (Supp. 1980)	"Sodomy" or Homosexual Intercourse					1-10 yrs.
Virgin Islands	V.I. Code Ann. tit. 14, §1702 (1964)	V	<14				≦5 yrs.
	V.I. Code Ann. tit. 14, §1703 (Supp. 1980)	V	14, 15				8 ≦≦1 yr. ≦≦$200
	V.I. Code Ann. tit. 14, §2061 (1964)	O, A	<16				≦20 yrs.
	V.I. Code Ann. tit. 14, §2061 (1964)	O, A	≧16				≦10 yrs.

Chart 1a Footnotes

1. The following states have special recidivist provisions within their sexual offense statutes. They provide for harsher penalties for repeated sexual offenses as follows:

   Mass.: 5 yrs. - life for second offense by perpetrator over 18 yrs.

   Neb.: Second offense, ≥25 yrs. without parole eligibility.

   Wyo.: If previous conviction, 5 yrs. - life.

2. These states provide more severe penalties where the perpetrator inflicts injury or force upon the victim:

   Del.: Victim ≤16 and perpetrator inflicts serious physical, mental or emotional injury. Penalty: ≤ Life.

   Fla.: Victim >11 and perpetrator uses or threatens to use deadly weapon or force likely to cause serious injury. Penalty: ≤30 yrs., ≤$10,000; Victim >11 and perpetrator uses or threatens to use force not likely to cause serious injury. Penalty: ≤15 yrs., $10,000.

   Hawaii: Victim <14 and perpetrator inflicts serious bodily injury. Penalty: 20-30 yrs., ≤ $10,000.

   Ind.: Deadly force used or threatened. Penalty: 20-30 yrs., $10,000.

   La.: Vaginal, anal and oral intercourse if perpetrator places victim in fear of receiving bodily harm. Penalty: ≤10 yrs. La. Rev. Stat. Ann. §43.1 (West Supp. 1980).

   Mass.: Use of force or threat of bodily injury requisite element to complete the crime. Penalty: Life.

   Ohio: Use of force or threat of force. Penalty: Life.

   Tex.: Victim <17 and perpetrator causes or attempts to cause injury. Penalty: 5 yrs. - Life. Tex. Penal Code Ann. tit. 5, §21.03, §21.05 (Vernon 1974).

   Vt.: Perpetrator causes serious bodily injury. Penalty: 25 yrs., $5,000.

   A.S.: Inflicts serious physical injury or displays deadly weapon in threatening manner.
   Penalty: §1102 - Life or 10-30 yrs.
   §1104 - ≤30 yrs.
   §1105 - Life or 10-30 yrs.
   §1106 - ≤30 yrs.

3. Illinois has a unique provision holding criminally liable a parent, legal guardian, or other person having care or custody of a child under 16, who knowingly permits or arranges for a child to participate in vaginal, anal, or oral intercourse, lewd fondling or touching.

4. These three states have included mandatory prison sentences within their sexual offense statutes for first offenses of sexual intercourse with children:

   La.: The full penalty for vaginal or anal intercourse with a child under 12 is life imprisonment at hard labor, without parole, probation or suspension of sentence.

   Nev.: Does not allow parole until a maximum of 10 yrs. is served.

   Wash.: No deferred or suspended sentence except for the purpose of commitment to an inpatient treatment facility.

5. Louisiana, Minnesota, Oregon and Texas allow defendants certain defenses under specified conditions:

   La.: Where perpetrator believed victim 16 and perpetrator is two to four years older than the victim, the sentence is 5 yrs.

   Minn.: It is an affirmative defense, which must be proved by a preponderance of the evidence, that the victim is at least 13 but less than 16 years of age and the perpetrator believed the victim was 16 years or older.

   Or.: It is a defense to prosecution under this section if (1) the victim >14 and had, prior to the time of the alleged offense, engaged promiscuously in sexual intercourse or deviate sexual intercourse; or (2) the perpetrator was <2 years older than the victim and the victim is <17.

   Tex.: It is an affirmative defense that the perpetrator is not more than two years older than the victim. It is also a defense to prosecution for sexual intercourse if the female is over 14 and had previously engaged in sexual intercourse or deviate sexual intercourse. It is a defense to prosecution for deviate sexual intercourse that the perpetrator is not more than two years older and was of the opposite sex.

6. An attempt to commit 1st degree rape or sexual offense in North Carolina, which includes intercourse with a child under 13, is punishable by a prison sentence of up to 20 years. N.C. Gen. Stat. §§14-27.2 and 27.4 (Supp. 1979).

7. Under Wisconsin law, consent is defined in §940.225(5) as an agreement freely given. A person under 15 is incapable of consent as a matter of law. There is a rebuttable presumption that a person age 15-17 is incapable of consent.

8. In each of these jurisdictions, the crime is a misdemeanor. In the remaining states, the offenses are felonies or are not classified as either a felony or misdemeanor within the provisions. The states which do not classify the offense are: Ala. Code §13-1-134, Cal. Penal Code §286, Idaho, La., Me. Rev. Stat. tit. 17A §252, Mass., Minn., Miss., Mont., Nev. Rev. Stat. §200.366 and 368, N.J., Okla., R.I., S.C., Wyo., P.R., V.I.

9. The following represent examples of pending state legislation dealing with child sexual abuse.

D.C.: All the criminal sex offense provisions, including sections dealing with sex offenses against children, are being revised. D.C. Bill "District of Columbia Sexual Assault Reform Act of 1981."

Ala.: A mandatory sentence of no parole is proposed for an adult convicted of "any felonious sexual offense" with a minor under 16. S.99 (1981).

Mass.: A mandatory sentence of 7-10 years is proposed for a conviction of "molesting a child." H.No. 5651 (1981).

Minn.: Re-defining of sexual contact and sexual conduct to eliminate "coerce" and add "cause" in provisions where person uses position of authority to "cause" child to submit. S.F.No. 454 (1981).

N.Y.: A provision has been proposed to repeal the corroboration requirement in child sex offense cases. S.2857 (1981).

CHART 1b

Basic Elements of Criminal Sexual Contact Provisions Dealing with Children

KEY

The symbols $>$, $<$, $\geq$, $\leq$ mean as follows:

$>$ - greater than

$<$ - less than

$\geq$ - equal to or greater than

$\leq$ - equal to or less than

In the PENALTIES Column, the money figures represent the maximum fine and the number of years refer to the length of imprisonment.

STATE	CITATION	TYPE OF CONTACT	VICTIM	AGE OF PERPETRATOR		PERPETRATOR'S RELATIONSHIP WITH VICTIM	PENALTIES
				SPECIFICALLY STATED	YEARS OLDER THAN VICTIM		
Alabama	Ala. Code §13-1-113 (1975)	Child Molestation Indecent Liberties Lewd and Lascivious Acts	<16				[1] ≦5 yrs. ≦$5,000
	Ala. Code §13-1-137 (Supp. 1979)	Sexual Contact	<12	≧16			1-10 yrs.
Alaska	Alas. Stat. §11.41.440 (Supp. 1980)	Sexual Contact	<13				[1] ≦5 yrs. ≦$50,000
Arizona	Ariz. Rev. Stat. Ann. §13-1404 (1978)	Sexual Contact	<15				2 yrs. ≦$150,000
	Ariz. Rev. Stat. Ann. §13-1410 (1978)	Child Molestation	<15				[2] 7 yrs. ≦$150,000
	Ariz. Rev. Stat. Ann. §13-1412 (1978)	Lewd and Lascivious Acts	<15				5 yrs. ≦$150,000
Arkansas	Ark. Stat. Ann. §41-1808 (1975)	Sexual Contact	<14	≧18			≦3 yrs. ≦$10,000
California	Cal. Penal Code §288 (Deering Supp. 1980)	Lewd and Lascivious Acts	<14				3, 5 or 7 years
	Cal. Penal Code §647 (Deering Supp. 1980)	Annoying or Molesting	<18			[1]	[1, 8] ≦6 mos. $500
Colorado	Colo. Rev. Stat. §18-3-404 (1978)	Sexual Contact	<18			Guardian or otherwise responsible for the general supervision of the victim's welfare.	[7] 6 mos.-2 yrs. $500-$5,000
	Colo. Rev. Stat. §18-3-405 (1978)	Sexual Contact	<15		≧4 yrs.		[3] ≦10 yrs ≦$30,000

STATE	CITATION	TYPE OF CONTACT	VICTIM	AGE OF PERPETRATOR		PERPETRATOR'S RELATIONSHIP WITH VICTIM	PENALTIES
				SPECIFICALLY STATED	YEARS OLDER THAN VICTIM		
Connecticut	Conn. Gen. Stat. §53a-73a (1979)	Sexual Contact	≤15				? ≤ 1 yr. ≤ $1,000
	Conn. Gen. Stat. §53a-73a (1979)	Sexual Contact	≤18			Guardian or otherwise responsible for the general supervision of the victim's welfare.	? ≤ 1 yr. ≤ $1,000
Delaware	Del. Code Ann. tit. 11, §761 (1979)	Sexual Contact	≤16		≥4 yrs.		? ≤ 2 yrs. ≤ $1,000
District of Columbia	D.C. Code Ann. §22-3501 (1973)	Indecent Liberties Lewd and Lascivious Acts	≤16				≤ 10 yrs.
Florida	Fla. Stat. Ann. §800.04 (Harrison's 1976)	Lewd and Lascivious	≤14				≤ 15 yrs. ≤ $10,000
Georgia	Ga. Code Ann. §26-2019	Child Molestation	≤14				1-20 yrs.
Hawaii	Haw. Rev. Stat. §707-736 (1976)	Sexual Contact	≤14				≤ 5 yrs. ≤ $5,000
	Haw. Rev. Stat. §707-737 (1976)	Sexual Contact	14, 15		≥4 yrs.		? ≤ 1 yr. ≤ $1,000
Idaho	Idaho Code §18-6607 (1979)	Lewd and Lascivious Acts	≤16				≤ Life
Illinois	Ill. Ann. Stat. ch. 38, §11-4 (Smith-Hurd 1979)	Lewd Fondling or Touching	≤16	≥17			4-15 yrs. ≤ $10,000
	Ill. Ann. Stat. ch. 38, §11-5 (Smith-Hurd 1979)	Lewd Fondling or Touching	≤18	≥14			? ≤ 1 yr. ≤ $1,000

STATE	CITATION	TYPE OF CONTACT	VICTIM	AGE OF PERPETRATOR		PERPETRATOR'S RELATIONSHIP WITH VICTIM	PENALTIES
				SPECIFICALLY STATED	YEARS OLDER THAN VICTIM		
Indiana	Ind. Code Ann. §35-42-4-3 (Burns Supp. 1977)	Fondles or Touches	≤ 12				3 5 yrs. ≤ $10,000
	Ind. Code Ann. §35-42-4-3 (Burns Supp. 1977)	Fondles or Touches	12, 13, 14, 15	≥ 16			1-2 yrs. ≤ $10,000
Iowa [D]	Iowa Code Ann. §709.8 (West Supp. 1980)	Lascivious Acts	≤ 14	≥ 18			≤ 5 yrs. ≤ $1,000
Kansas	Kan. Stat. Ann. §21-3503 (Supp. 1976)	Indecent Liberties	≤ 16				(1-5)-20 yrs. ≤ $10,000
	Kan. Stat. Ann. §21-3504 (Supp. 1976)	Indecent Liberties				Guardian, proprietor, employee of any foster home, orphanage, or other public or private institution for the care and custody of minor children.	(5-15)-life ≤ $10,000
Kentucky	Ky. Rev. Stat. Ann. §510.110 (1975)	Sexual Contact	[4] ≤ 12		[4]		1-5 yrs. ≤ $10,000
	Ky. Rev. Stat. Ann. §510.120 (1975)	Sexual Contact	≤ 14				≤ 1 yr. ≤ $500
	Ky. Rev. Stat. Ann. §510.030	Sexual Contact	[4] ≤ 16		[4]		≤ 90 days ≤ $250
Louisiana	La. Rev. Stat. Ann. §80 (West Supp. 1980)	Lewd and Lascivious Acts	≤ 17	> 17	≥ 2 yrs.		≤ 5 yrs. ≤ $5,000
Maine	Me. Rev. Stat. tit. 17-A, §255 (Supp. 1979)	Sexual Contact	≤ 14		≥ 3 yrs.		≤ 5 yrs. ≤ $2,500
Maryland	Md. Ann. Code art. 27, §464B (Supp. 1979)	Sexual Contact	≤ 14		≥ 4 yrs.		≤ 10 yrs.

STATE	CITATION	TYPE OF CONTACT	VICTIM	AGE OF PERPETRATOR		PERPETRATOR'S RELATIONSHIP WITH VICTIM	PENALTIES
				SPECIFICALLY STATED	YEARS OLDER THAN VICTIM		
Massachusetts	Mass. Laws c. 459, sec. 4, of the Acts of 1980, amending M.G.L. ch. 265, §13B.	Indecent assault and battery	≤14				2½-10 yrs.[1]
	Mass. Laws c. 459, sec. 4, of the Acts of 1980, amending M.G.L. ch. 265.	Indecent assault and battery	≥14				2½-5 yrs.
Michigan	Mich. Comp. Laws Ann. §750.520c (Supp. 1980)	Sexual Contact	≤13				≤15 yrs.
	Mich. Comp. Laws Ann. §750.520c (Supp. 1980)	Sexual Contact	13, 14, 15			Member of same household, related by blood or affinity to the 4th degree, or in a position of authority over the victim.	≤15 yrs.
Minnesota[6]	Minn. Stat. Ann. §609.343 (West Supp. 1980)	Sexual Contact	≤13		≥3 yrs.		≤15 yrs.
	Minn. Stat. Ann. §609.343 (West Supp. 1980)	Sexual Contact	13, 14, 15		≥4 yrs.	Position of authority over the victim.	≤15 yrs.
	Minn. Stat. Ann. §609.345 (West Supp. 1980)	Sexual Contact	≤13		≤3 yrs.		≤5 yrs.
	Minn. Stat. Ann. §609.345 (West Supp. 1980)	Sexual Contact	13, 14, 15[4]		≥4 yrs.		≤5 yrs.

STATE	CITATION	TYPE OF CONTACT	VICTIM	AGE OF PERPETRATOR		PERPETRATOR'S RELATIONSHIP WITH VICTIM	PENALTIES
				SPECIFICALLY STATED	YEARS OLDER THAN VICTIM		
New Hampshire Continued	N.H. Rev. Stat. Ann. §632-A:4 (Supp. 1977)	Sexual Contact	13, 14, 15			Member of the same household, related by blood or affinity, or in a position of authority over the victim.	[7] 1 yr. $1,000
New Jersey	N.J. Stat. Ann. §2C:14-3 (West 1979)	Sexual Contact	13, 14, 15			Related by blood or affinity to the 3rd degree; supervisory or disciplinary power over the victim by virtue of the perpetrator's legal, professional or occupational status; foster parent, guardian person in loco parentis within the household.	3-5 yrs. ≦ $7,500
	N.J. Stat. Ann. §2C:14-3 (West 1979)	Sexual Contact	16, 17			Member of the household with supervisory or disciplinary power over the victim.	1½ yrs. ≦ $7,500
	N.J. Stat. Ann. §2C:14-3 (West 1979)	Sexual Contact	13, 14, 15		≧ 4 yrs.		1½ yrs. ≦ $7,500
New Mexico	N.M. Stat. Ann. §30-9-13 (1980)	Sexual Contact	<13				2-10 yrs. ≦ $5,000
	N.M. Stat. Ann. §30-9-13 (1980)	Sexual Contact	[3] 13, 14, 15, 16 17			Position of authority.	[3] 2-10 yrs. ≦ $5,000
[4] New York	N.Y. Penal Law §130.55 (McKinney 1975)	Sexual Contact	[4] < 17				[7] ≦ 3 mos. $500
	N.Y. Penal Law §130.60 (McKinney 1975)	Sexual Contact	< 14				≦ 1 yr. ≦ $1,000
	N.Y. Penal Law §130.65 (McKinney 1975)	Sexual Contact	<11				[3] ≦ 7 yrs. ≦ $5,000
North Carolina	N.C. Gen. Stat. §14-202.1 (Supp. 1979)	Indecent Liberties, Lewd and Lascivious Acts	<16	≧16	≧5 yrs.		<10 yrs. Fine in the discretion of the court.

STATE	CITATION	TYPE OF CONTACT	VICTIM	AGE OF PERPETRATOR		PERPETRATOR'S RELATIONSHIP WITH VICTIM	PENALTIES
				SPECIFICALLY STATED	YEARS OLDER THAN VICTIM		
North Dakota	N.D. Cent. Code §12.1-20-03 (Supp. 1979)	Sexual Contact	< 15				$\leq$ 10 yrs. $\leq$ $10,000
	N.D. Cent. Code §12.1-20-03 (Supp. 1979)	Sexual Contact	≥ 15			Parent, guardian, or otherwise responsible for the general supervision of the victim's welfare.	$\leq$ 1 yr. $\leq$ $1,000
	N.D. Cent. Code §12.1-20-03 (Supp. 1979)	Sexual Contact	≥ 15		An Adult		$\leq$ 1 yr. $\leq$ $1,000
Ohio	Ohio Rev. Code Ann. §2907.05 (Page Supp. 1980)	Sexual Contact	< 13				(1-3)-10 yrs. $\leq$ $5,000
Oklahoma	Okla. Stat. Ann. tit. 21, §1123 (West Supp. 1979)	Lewd and Lascivious Acts	< 14	Male ≥ 16 Female ≥ 18	≥ 5 yrs.		1-20 yrs.
Oregon	Or. Rev. Stat. §163.425 (1977)	Sexual Contact	< 12				$\leq$ 5 yrs. $\leq$ $2,500
	Or. Rev. Stat. §163.415 (1977)	Sexual Contact	[4] Without consent defined as < 18.		[4]		[7] $\leq$ 1 yr. $\leq$ $1,000
Pennsylvania	NONE						
Rhode Island	R.I. Gen. Laws §11-37-4 (Supp. 1979)	Sexual Contact	< 13				3-15 years
South Carolina	S.C. Code §16-15-40 (1976)	Lewd or Lascivious Acts	< 14	≥ 14			At court's discretion.

STATE	CITATION	TYPE OF CONTACT	VICTIM	AGE OF PERPETRATOR		PERPETRATOR'S RELATIONSHIP WITH VICTIM	PENALTIES
				SPECIFICALLY STATED	YEARS OLDER THAN VICTIM		
Minnesota Continued	Minn. Stat. Ann. §609.345 (West Supp. 1980)	Sexual Contact	13, 14, 15			Position of authority over the victim.	≤ 5 yrs.
Mississippi	Miss. Code Ann. §97-5-23 (Supp. 1979)	Touching or Handling for Lustful Purpose.	<14	>18			1-10 yrs. $10-$1,000
Missouri	Mo. Ann. Stat. §566.100 (Vernon 1979)	Sexual Contact	<12				≤ 5 yrs. ≤ $5,000
	Mo. Ann. Stat. §566.110 (Vernon 1979)	Sexual Contact	12, 13				≤ 1 yrs. ≤ $1,000
Montana	Mont. Rev. Code Ann. (Crim. Code §94-5-502 (1977)	Sexual Contact	<16		≥ 3 yrs.		≤ 20 yrs.
	Mont. Rev. Code Ann. (Crim. Code §94-5-502 (1977)	Sexual Contact	Without consent, defined as <16				≤ 6 mos. ≤ $500
Nebraska	Neb. Rev. Stat. §28-320 (Supp. 1977)	Sexual Contact	8				
Nevada	Nev. Rev. Stat. §201.230 (1979)	Lewdness with children	<14				1-10 yrs. ≤ 10,000
New Hampshire	N.H. Rev. Stat. Ann. §632-A:4 (Supp. 1977)	Sexual Contact	<13				≤ 1 yr. ≤ $1,000

STATE	CITATION	TYPE OF CONTACT	VICTIM	AGE OF PERPETRATOR		PERPETRATOR'S RELATIONSHIP WITH VICTIM	PENALTIES
				SPECIFICALLY STATED	YEARS OLDER THAN VICTIM		
South Dakota	S.D. Compiled Laws Ann. §22-22-7 (1979)	Sexual Contact	≤15	≥15			≤15 yrs. ≤$15,000
	S.D. Compiled Laws Ann. §22-22-7 (1979)	Sexual Contact	≤15	≥15	≤3 yrs.		≤1 yr. ≤$1,000
Tennessee	Tenn. Code Ann. §39-3704 (Supp. 1978)	Sexual Contact	≤13				2-15 yrs.
	Tenn. Code Ann. §39-3704 (Supp. 1978)	Sexual Contact	13, 14, 15			Related by blood or affinity to the 3rd degree, or in a position of custodial or official authority over victim.	2-15 yrs.
Texas	Tex. Penal Code Ann. tit. 5, §21.11 (Vernon 1974)	Sexual Contact	[4] ≤17				2-10 yrs. ≤$5,000
Utah	Utah Code Ann. §76-5-404 (Supp. 1979)	Touching	Without consent defined as ≤14				≤5 yrs. ≤$5,000
Vermont	Vt. Stat. Ann. tit. 13, §2602 (1974)	Lewd and Lascivious Acts	≤16				1-5 yrs.
Virginia	Va. Code §18.2-63 (1975)	Indecent Liberties	≤14	≥18			≤5 yrs. ≤$1,000
Washington	Wash. Rev. Code Ann. §9A.44.100 (Supp. 1980)	Sexual Contact	≤14				≤10 yrs. ≤$10,000
West Virginia	W.Va. Code §61-8B-6 (1977)	Sexual Contact	≤11	≥14			1-5 yrs. ≤$10,000
	W.Va. Code §61-8B-8 (1977)	Sexual Contact	≤16		[4]		[7] ≤90 days ≤$500

STATE	CITATION	TYPE OF CONTACT	VICTIM	AGE OF PERPETRATOR		PERPETRATOR'S RELATIONSHIP WITH VICTIM	PENALTIES
				SPECIFICALLY STATED	YEARS OLDER THAN VICTIM		
Wisconsin	Wisc. Stat. Ann. §940.225 (West Supp. 1979)	Sexual Contact	≤12				≤ 20 yrs.
	Wisc. Stat. Ann. §940.225 (West Supp. 1979)	Sexual Contact	[5] 12, 13, 14, 15, 16, 17				≤10 yrs. ≤$10,000
Wyoming	Wyo. Stat. §6-4-303 (1977)	[3] Sexual Contact	≤12				[1] 1-20 yrs.
	Wyo. Stat. §14-3-105 (1977)	Indecent Liberties	A Child				≤10 yrs. $100 - $1,000
American Samoa	A.S. Code tit. 15, §1107 (Supp. 1980)	Sexual Contact	≤14				[3] ≤5 yrs. ≤$5,000
Guam	Guam Penal Code §288 (1970)	Lewd and Lascivious Acts	≤14				1-15 yrs.
Puerto Rico	P.R. Laws Ann. tit. 33, §4067 (Supp. 1980)	Lewd and Lascivious Acts	≤14				1-5 yrs.
Virgin Islands	NONE						

Chart 1b Footnotes

1. The following states have recidivist provisions within their sexual contact statutes which provide for harsher penalties for repeated offenses:

   Ala.: 2nd offense - 2-10 yrs., no probation.
   Alaska: 2nd offense - 2 yrs., 3rd offense - 3 yrs.
   Cal.: 2nd offense, or, 1st conviction after conviction for lewd and lascivious acts with child ≤14, state prison.
   Mass.: 2nd offense - life or term of yrs., no furlough, temporary release or educational programs until 2/3 of minimum sentence served.
   Wyo.: 2nd offense - 5 yrs. - life.

2. Arizona has a mandatory sentence within the child molestation statute, which provides that no probation shall be allowed before 2/3 of the sentence, or a minimum of 5 years, is served for a first offense.

3. These states provide more severe penalties where the perpetrator inflicts injury or force upon the victim:

   Colo.: Where force, threat or intimidation used. Penalty: 5-40 yrs.
   Ind.: Where deadly force used or threatened or while armed with a deadly weapon. Penalty: 30 yrs., ≤ $10,000.
   N.M.: The same penalty attaches for sexual contact with a 13-18 yr. old child by any perpetrator if there is personal injury, or, aiding or abetting by one or more persons, or, if the perpetrator is armed with a deadly weapon. Sexual contact of a 13-18 yr. old by any perpetrator with force or coercion carries a lower penalty of 1-5 yrs. or $5,000.
   N.Y.: Aggravated sexual abuse defined as the insertion of a foreign object into the vagina or rectum of a victim less than 11 yrs. old, causing physical injury. Penalty: > 25 yrs. N.Y. Penal Law §130.70 (McKinney Supp. 1979).
   Wyo.: Serious bodily injury is a requisite element to complete the crime of sexual contact.
   American Samoa: Serious physical harm or threat of deadly weapon. Penalty: ≤ 7 yrs. and/or ≤ $5,000.

4. Under the laws of Ky., Minn., N.Y., Or., Tex., and W.Va., defendants are allowed certain affirmative defenses under specified conditions:

   Ky.: Where victim's lack of consent is due solely to victim's age, 14-16 yrs. old, and perpetrator < 5 yrs. older than victim.

Minn.: If perpetrator can prove by a preponderance of the evidence that he believed the victim to be ≥ 16.

N.Y.: Where victim's lack of consent is due solely to victim's age, <17 but >14, and perpetrator <5 yrs. older than victim. N.Y. Penal Law §130.55 (McKinney 1975).

Or.: Where victim's lack of consent is due solely to victim's age, <18 but >14, and perpetrator is <4 yrs. older than the victim.

Tex.: If victim ≥ 14 and had, prior to the alleged offense, engaged promiscuously in sexual intercourse, deviate sexual intercourse, sexual contact or indecent exposure.

W.Va.: If perpetrator is < 16 or <4 yrs. older than victim.

5. Under Wisconsin law, consent is defined in Wisc. Stat. Ann. §940.225 (West Supp. 1979) as an agreement freely given. A person under 15 is incapable of consent as a matter of law. There is a rebuttable presumption that a person age 15 to 17 is incapable of consent.

6. These states have legislation pending:

Iowa: Revision of sexual contact provisions. H.F. No.4 (1981).

Minn.: Redefining of sexual contact (and conduct) to eliminate "coerce" and add "cause" in provisions where person uses authority to "cause" child to submit. S.F. No. 454 (1981).

7. In these states, the crime is a misdemeanor. In the remaining states, it is either a felony or not classified as either a felony or a misdemeanor within the provisions. The states which do not classify the offense are: D.C., Ga., La., Me., Mass., Minn., Miss., Mont., Neb., Nev., N.J., R.I., S.C., Utah, Wyo. and P.R.

8. Nebraska's sexual contact statute, Neb. Rev. Stat. §28-320 (Supp. 1977), applies to any person who subjects another person to sexual contact and either overcomes the victim by force or threat of force, or knew or should have known that the victim was physically or mentally incapable of resisting or appraising the nature of his or her conduct. Although the statute does not specify either age of victim or age of perpetrator, a child victim could be covered under "any person incapable of resisting or appraising' the sexual contact. The perpetrator is guilty of sexual assault and the crime is a misdemeanor unless the actor causes serious personal injury to the victim, in which case it is a felony.

ABA AMERICAN BAR ASSOCIATION

GOVERNMENTAL RELATIONS OFFICE

DIRECTOR
Herbert E. Hoffman

ASSOCIATE DIRECTOR
Robert D. Evans

STAFF DIRECTOR FOR BAR LIAISON
Craig H. Baab

STAFF DIRECTORS FOR GOVERNMENTAL AFFAIRS
Denise A. Cardman
Lillian B. Gaskin

STAFF DIRECTOR FOR LEGISLATIVE AFFAIRS
Kevin J. Driscoll

STAFF DIRECTOR FOR ADMINISTRATION
Albin C. Burkman, Jr.

ASSISTANT STAFF DIRECTORS FOR INFORMATION SERVICES
Elizabeth Goodrich
Peggy A. Richter

ASSISTANT STAFF DIRECTOR FOR ADMINISTRATION
Kathryn D. Tillman

1800 M STREET, N.W., WASHINGTON, DC 20036 TELEPHONE: (202) 331-2200

WRITER'S DIRECT NUMBER: 331-2210

September 23, 1981

Honorable Charles McC. Mathias
Chairman, Subcommittee on Governmental
Efficiency
Committee on Governmental Affairs
United States Senate
Washington, D. C. 20510

Dear Mr. Chairman:

Pending with your Subcommittee is Senate Resolution 207, a resolution which would express the disapproval of the Senate of D.C. City Council Act 4-69 which relates to various types of private, consensual, sexual conduct by adults.

Pursuant to my conversation with a member of your staff I call your attention to the following resolution which was adopted by the American Bar Association at its Annual Meeting in August of 1973:

> BE IT RESOLVED, That the legislatures of the several states are urged to repeal all laws which classify as criminal conduct any form of non-commercial sexual conduct between consenting adults in private, saving only those portions which protect minors or public decorum.

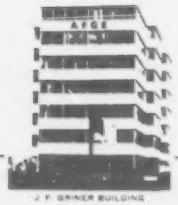
Although the resolution refers specifically to the legislatures of the several states, it would appear that the action of the District of Columbia City Council, pursuant to its home rule autnority, is analogous to that of state legislatures.

Sincerely,

Herbert E. Hoffman

HEH:eg

cc: All Members



AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES

AFFILIATED WITH THE AFL-CIO

KENNETH T. BLAYLOCK, NATIONAL PRESIDENT · JOSEPH D. GLEASON, EXECUTIVE VICE PRESIDENT · NICHOLAS J. HOLAN, NATIONAL SEC.-TREAS.

1325 MASSACHUSETTS AVE., N.W. · WASHINGTON, D. C. 20005
Telephone: (202) 737-8700

J. F. GRINER BUILDING

IN REPLY PLEASE REFER TO

September 28, 1981

The Honorable Senator Charles McC. Mathias, Jr.
United States Senate
Washington, DC

Dear Senator Mathias:

The AFGE in the District of Columbia (AFGE Council 211) have long supported the concept of Home Rule for DC residents and employees. AFGE has been actively involved in the political process at the DC City Council. Although we sometimes have differences with the DC government, we nonetheless support the principle of Home Rule when the local residents and community organizations have made their decision on how to run their community.

As you are surely aware, Jerry Falwell and the so called Moral Majority have launched a campaign in Congress to disapprove the DC Sexual Assault Act of 1981. The Act was unanimously passed by the DC City Council after well publicized hearings and debate and within the parameters of Home Rule provided by Congress. Anything you and other members of Congress can do to defeat Mr. Falwell and to preserve Home Rule will be remembered and greatly appreciated.

Thank you for your time and consideration.

Sincerely,

Bernard

Bernard Demczuk
DC Lobbyist - AFGE

bl
CC: To all members

ARLINGTON COUNTY, VIRGINIA
COMMITTEE ON THE
STATUS OF WOMEN
COURT HOUSE, ROOM 204, ARLINGTON, VIRGINIA 22201
703-558-2401

DEBRA JUDD
STAFF LIAISON

1981 SEP 28 PM 3:01

September 25, 1981

The Honorable Charles Mathias
United States Senate
Room 6222 - Dirksen Office Building
Washington, D.C.

Dear Senator Mathias:

The Arlington County Commission on the Status of Women is writing to express its support for the DC Sexual Assault Reform Act of 1981: DC Act 469.

We fully support the legislation as providing comprehensive reform to make the laws on sexual assault more inclusive and easier to enforce. It broadens traditional concepts of rape, is sex-neutral, expands protection against sexual abuses to previously unprotected classes of persons and repeals the prohibitions on non-commercial sexual conduct between consenting adults.

Sincerely,

Ann Taylor Schaeffer

Ann Taylor Schaeffer
Chairman

ATS:ac

CALVARY BAPTIST CHURCH

Rural Route 4, Box 8-A
Lexington Park, Md. 20653
Phone 301-862-1842 – 862-4435

September 25, 1981

Senator Charles McC. Mathias
United States Senate
Washington, D. C. 20515

Dear Senator Mathias:

I would appreciate your efforts to keep D. C. Act 4-69, Senate Resolution 207 from being enacted. Such provisions as provided in this Act will promote a better moral climate for our nations capital.

May God give you the wisdom, strength and grace to fulfill the responsibilities of your office.

Sincerely yours,

John R. Little

John R. Little,
Pastor

JRL

Catholic War Veterans Auxiliary

District of Columbia Department

In re: Senate Act 4-69

Hearing Sept. 30, 1981

Senator Charles McC. Mathias
Chairman, Subcommittee on Government
Efficiency and the District of Columbia

Mr. Chairman and Members of the Committee:

My name is Adelaide V. Kowansky. I reside at 5900 Carlton Lane, Bethesda, Maryland, 20816 and I appear in my capacity as Department President, of the Ladies Auxiliary of the Catholic War Veterans, U.S.A., Department of District of Columbia. This organization has as its motto, "For God, Country and Home."

We are absolutely opposed to Senate Act 4-69 the passage of which would amend she existingscriminal codes and abolish or lessen penalties for several kinds of perversions, etc.

The District of Columbia, our Nation's Capital, belongs to all the people in all the States of the U.S.A. We have an interest in keeping our nation one that other countries will look up to as a beacon of decency for all to follow.

Our school children who come to visit their Capital from the different states should have a feeling of pride and should be able to come here without fear of the different perversions this Act will bring.

This nation was founded "UNDER GOD". Let's keep it that way or it will be destroyed the same way Sodom and Gomorra was.

Respectfully submitted,

(Mrs.) Adelaide V. Kowansky

COMMON CAUSE/DISTRICT OF COLUMBIA

P.O. Box 19250, Washington, D.C. 20036, (202) 833-1200

28 September 1981

Hon. Ronald V. Dellums
Hon. Charles McC. Mathias, Jr.
United States Congress
Washington, DC

Dear Chairmen:

We are writing in support of District of Columbia Law 4-69 which is currently before Congress for the required thirty day review period.

Under the Home Rule Charter granted to the District by Congress, this law is the result of extensive public hearings, two Council votes and approval by the Mayor. The people of the District of Columbia, through their elected officials and the democratic process, have clearly spoken on this legislation.

The DC Chapter of Common Cause firmly supports the concept of Home Rule for the District and the right of the people of the District to exercise their democratic rights in such local legislative matters.

We urge your respective Committees to reject any Resolutions of Disapproval and we urge the Members of the House and Senate to respect the local legislative process by voting against any motion to discharge.

Sincerely,

James Thackaberry

James Thackaberry
Chairman
D.C. Common Cause

cc: All Members

Council 26/AFSCME
CAPITAL AREA COUNCIL OF FEDERAL EMPLOYEES
1029 VERMONT AVENUE, N.W., SUITE 510
WASHINGTON, D.C. 20005
TELEPHONE: (202) 393-5757

BEN C. ELLIOTT
Acting Director

September 25, 1981

Honorable Charles Mathias
United States Senate
Washington, D.C. 20510

Dear Senator Mathias:

As you are surely aware, Jerry Falwell and the so-called Moral Majority have launched a campaign in Congress to disapprove the D.C. Sexual Assault Reform Act of 1981. The Act was unanimously passed by the D.C. City Council after well publicized hearings and debate and within the parameters of home rule provided by Congress. The Moral Majority chose not to participate in that process. We are concerned that Mr. Falwell has now decided to lead a fight to overturn a law which was passed by the elected representatives of the citizens of the District of which Mr. Falwell is not a resident.

Anything you and other members of Congress can do to defeat Mr. Falwell will be remembered and appreciated. If he should succeed in this effort, I fear he and his friends will take this as a signal that they can intimidate and pressure Congress into passing legislation which will implement the Moral Majority's own brand of morality.

Sincerely,

Peter Galley
President
AFSCME Council 26

D.C. FEDERATION OF CIVIC ASSOCIATIONS, INC.
P.O. Box 4549
Washington, D.C. 20017

81 SEP 11 AM 2:19

President
Arthur V. Meigs

1st Vice President
Frank P. Bolden

2nd Vice President
Robert E. Mason

3rd Vice President
Lillian J. Huff

Recording Secretary
Roberta T. Chesnut

Asst. Recording Sec'y
Brian P. Moore

Correspondence Sec'y
Gloria K. Roberts

Asst. Corr Sec'y
Annie O. Bayious

Financial Secretary
Carlyn J. Bingham

Treasurer
George Boyd

Appointed Officers

Archivist
Gregory R. New

Chaplain
Rev. William B. Bynum

Parliamentarian
Alethea W. Campbell

Sergeant-At-Arms
Simon L. Cain

September 12, 1981.

Dear Senator Matthias,

The enclosed letter to the Vice President and the Speaker is sent to you also with an urgent request for your attention and action.

Thanks for your courtesy to us. May there be an equal measure of appreciation for our need of your help.

Sincerely yours,
Arthur V. Meigs
President

D.C. FEDERATION OF CIVIC ASSOCIATIONS, INC.
P.O. Box 4549
Washington, D.C. 20017

September 12, 1981.

Hon. George Bush
Vice President of the
United States

Hon. Thomas P. O'Neill
Speaker of the House of
Representatives

President
Arthur V. Meigs

1st Vice President
Frank P. Bolden

2nd Vice President
Robert E. Mason

3rd Vice President
Lillian J. Huff

Recording Secretary
Roberta T. Chesnut

Asst. Recording Sec'y
Brian P. Moore

Correspondence Sec'y
Gloria K. Roberts

Asst. Corr Sec'y
Annie O. Bayious

Financial Secretary
Carlyn J. Bingham

Treasurer
George Boyd

Appointed Officers

Archivist
Gregory R. New

Chaplain
Rev. William B. Bynum

Parliamentarian
Alethea W. Campbell

Sergeant-At-Arms
Simon L. Cain

Gentlemen:

Reference is made to D. C. Act 4-69, sometimes referred to as the D. C. Sexual Assault Act of 1981, now before the Congress.

The D. C. Federation of Civic Associations, comprising fifty-six (56) local civic and citizens' associations in the District of Columbia, is vehemently opposed to this act. On September 9, 1981 our Executive Committee, acting for the full body under its constitution, instructed me by an overwhelming vote to write you to this effect. Strong individual expressions of opposition to the bill had preceded this action.

We hereby petition the Congress to disapprove Act 4-69, submitted to it on July 21, 1981, such disapproval being authorized by law.

Earlier this year our delegates and members, and citizens generally, were so taken aback by provisions in the bill affecting those under 16, that though these provisions were stricken from it for the time being by the City Council, other sections which are before you were left in.

Not previously highlighted in public forums, these provisions, removing all penalties from sexual acts of any kind committed with the "consent" of any party sixteen years of age or over, were passed by the Council, signed by the Mayor and submitted to Congress. There was a minimum of legislative discussion and virtually no opportunity for public input. Among acts made legal were adultery, fornication and sodomy - and others.

We regard the steam-roller legislative procedure employed as a travesty of the local legislative process intended by our Home Rule Act, as well as our opposing the substance of the above-mentioned permissive portion of the legislation. Our last recourse as citizens of the District and of the United States is to petition the Congress to veto Bill 4-69.

The Federation has since its inception in 1921 worked with the Congress for sound laws expressing our fundamental value system including many defining civil liberties. Bill 4-69 threatens our civil liberties in our view because it threatens the value system on which they, including our domestic tranquility, are based. For this reason we consider this petition as in line with past action as well as seeking to secure the future.

We request your immediate attention in this matter.

Respectfully yours,
Arthur V. Meigs
Arthur V. Meigs
President

Copies: Senator Mathias; Representatives Dellums, Julian Dixon, McKinney and Fauntroy; Mayor Barry; D. C. City Council.

DOWNTOWN CLUSTER OF CONGREGATIONS
Washington, D. C.

PARTICIPATING CONGREGATIONS

Asbury United Methodist Church
Calvary Baptist Church
First Congregational United Church of Christ
The Church of the Epiphany
Luther Place Memorial Church
Metropolitan A.M.E. Church
Mount Vernon Place United Methodist Church
National City Christian Church
New York Avenue Presbyterian Church
St. Matthew's Cathedral
Temple Micah
The Greater New Hope Baptist Church

9/25/81

Honorable Charles Mathias
Honorable Ronald Dellums
United States Congress
Washington, DC

Greetings,

Thank you for your continuing support for the people of the District of Columbia in their efforts to make home rule a reality.

The actions of that group that calls itself the "moral majority" has never been in worst taste than their current effort to rewrite the laws of the District of Columbia in the Congress. We of the Downtown Cluster reject the notion that laws of the District must be written to please all the people of the nation.

We can live with these laws and I'm sure any person of good will can.

May God's blessing be with you.

Sincerely,

George F. Jones

George F. Jones, President

The Gray Panthers

of Metropolitan Washington

711 9th Street, Northwest
Washington, D. C. 20001
347-9541

September 26, 1981

Hon. Charles Mathias, Jr.
United States Senate
Washington, DC 20510

Dear Senator Mathias:

The Gray Panthers of Metropolitan Washington are alarmed by the efforts of some members of Congress, as well as the Moral Majority, to undermine Home Rule for the District of Columbia.

Home Rule in the District, even though limited in scope, was gained only after considerable struggle by the citizens of the community. The law which gave us Home Rule is just one example of the laws and precepts upon which our American Government is based.

To countermand laws passed by the District's elected City Council and Mayor is completely unjustified and undemocratic.

Please, Mr. Senator, do not support any legislation which will violate the support of Home Rule.

Very truly yours,

Sally Cory

Sally Cory, Co-Convenor

Elnora Jackson

Elnora Jackson, Co-Convenor

cc: Members of the Senate

Greater Washington Central Labor Council AFL-CIO

1411 K St., N.W., Washington, D.C. 20005 (202) 783-4242

President Emeritus
J. C. Turner

EXECUTIVE COMMITTEE
Robert E. Petersen
President
Kenneth Reichard
1st Vice President
Geraldine P. Boykin
2nd Vice President
David Robinson
3rd Vice President
William H. Simons
Secretary
John C. Hazel
Treasurer
Frederick P. Allen
Russell E. Binion
Melvin L. Broyles
Harry Chambers
Jack R. Clapsaddle
Earl E. Dove
Michael Fusco
Michael W. Gildea
William Hoyle
John R. Queckenbush
Matthew R. Romeo
Cyprian O. Tilghman

Trustees
Michael A. Collins
Vincent T. Foo
James A. Shearer

Sergeant-at-Arms
Francis J. Olshefski

Executive Assistant to the President
Joslyn N. Williams

September 28, 1981

Honorable Charles McC.Mathias
Honorable Ronald V. Dellums
United States Congress
Washington, D. C.

Dear Senator Mathias and Congressman Dellums:

You are surely aware Jerry Falwell and the so-called Moral Majority have launched a campaign in Congress to disapprove the D. C. Sexual Assault Reform Act of 1981. The act was unanimously passed by the D. C. City Council after well publicized hearings and debates and within the guidelines of Home Rule provided by Congress.

We are concerned that Mr. Falwell has now decided to lead a fight to overturn a law which was passed by the elected representatives of the citizens of the District of which Mr. Falwell is not a resident.

We urge you and other members of Congress to do all you can to preserve Home Rule by defeating this attempt to overturn this law. If Mr. Falwell should succeed in this effort, we fear that the concept of Home Rule will suffer irreparable harm. The residents of the District of Columbia deserve no less freedom from Congressional interference than the residents of every other city in the United States. Your support of the District of Columbia in this matter would be greatly appreciated.

Sincerely,

Robert E. Petersen

Robert E. Petersen, President

REP:mg
opeiu #2, afl-cio

3118 Patterson Street, NW
Washington, DC 20015
September 20, 1981

The Honorable Charles McC. Mathias, Jr.
U. S. Senate
Washington, D.C. 20510

Dear Senator Mathias:

I am submitting the following statement for the record of your subcommittee's hearings this week on the resolution introduced by Sen. Denton to disapprove D.C. Act 4-69, the Sexual Assault Reform Act of 1981.

I am writing as a member of the Chevy Chase (D.C.) Citizens Association and as a native Washingtonian, to express my outrage over the participation of the Federation of Citizens Associations in the Moral Majority's drive to destroy home rule for the District of Columbia.

Senators should understand that the Federation's leaders decided upon this despicable course by their own initiative and with absolutely no consultation of the individual members of the groups within the Association. Therefore, President Stephen Koczak, First Vice President George Frain, and their cohorts speak for no one but themselves. Their claim that "both the explicit provisions and the implicit ramifications of this act are abhorrent to the members of our Federation" is therefore utterly fraudulent.

No less deplorable is their attempt to pretend that they have been inspired by the position of Archbishop Hickey against the bill. While I believe the Archbishop's statement in the Catholic Standard in June was misguided in several respects, the Archbishop very commendably refrained from suggesting that Congress ignore the home rule principle by overturning the bill.

Koczak and Frain's plea that decriminalization of sodomy in the District would "deprive its residents of the same quality of life as citizens of the 50 states enjoy" reflects their refusal to study the issues objectively before taking a stand. Fully half the states of the Union are currently free of such obnoxious laws. Moreover, Koczak and Frain are apparently unaware that the D.C. sodomy prohibition extends to all persons in the city, whether heterosexual or homosexual, and even applies to married couples. I, for one, am appalled by the notion that the government can not regulate boardrooms but can regulate bedrooms.

The Federation of Citizens Associations is composed of individuals of all political and religious persuasions who can put aside their differences to cooperate for the good of the community across a wide range of nonpolitical, nonreligious concerns. By surrendering the Federation to the Moral Majority, Koczak and Frain have betrayed the trust we members placed in them. I hope Congress will not be misled by their exploitation of our good intentions.

Sincerely,
Craig Howell
Craig Howell

Hunter, Polikoff, Bodley, & Bottum, P.C.
1511 K Street NW/Suite 539 • Washington, D.C. 20005 • (202) 783-3410
a law collective

Attorneys:
Nancy D. Polikoff*
Nan D. Hunter
Alice L. Bodley
Mary P. Bottum
Legal Worker:
Elizabeth Lytle
Office Worker:
Julia Lee

*also admitted in Maryland

September 24, 1981

Chairmen Mathias and Dellums
District Committees
United States Congress

Dear Chairmen:

I am writing for the Feminist Law Collective to express our strong support for the D.C. Sexual Assault Reform Act of 1981 (D.C. Act 4-69) and for the concept of self government for the District of Columbia. I understand that opponents of the Act claim that the public has had no input into the Act. The facts are to the contrary. The D.C. City Council held numerous hearings on the Act at which the public had the opportunity to be heard. The Act was unanimously passed by the City Council after full debate and was signed by the Mayor.

The provisions of the Act also deserve your support. The Act is comprehensive. The reforms make the law on sexual assault more inclusive and easier to enforce. The act is sex neutral, expands the protection against sexual abuse to previously unprotected classes of persons and, in keeping with the legislatures of 25 other states, repeals prohibitions on uncoerced sexual conduct between consenting adults.

The Feminist Law Collective strongly urges that the will of the people of the District of Columbia, as expressed through their elected representatives in D.C. Act 4-69, be respected.

Sincerely,

Mary Bottum

Mary Bottum
For the Feminist Law Collective

Officers
BERT SILVER
President
NATHAN LEWIN
1st Vice President
DR. JACK S. COHEN
2nd Vice President
HELENE KARPA
Secretary
STEPHEN N. GELL
Treasurer

Executive Board
DAVID ALTSHULER
MAURICE D. ATKIN
IRA BARTFIELD
SYLVIA BLAJWAS
GARY BONNETT
TOBY BOYMEL
LEE J. BURSTYN
JORDAN J. CHOPER
DAVID S. DAVIDSON
LUNA E. DIAMOND
MEYER EISENBERG
HERBERT A. FIERST
NORMAN I. GELMAN
NORMAN GOLDSTEIN
ZEV HENDEL
DR. ELAINE K. HOLLANDER
SHOSHANA KUGLER
RABBI BERTRAM A. LEFF
HELEN S. LEWIS
TSVI LIEBER
JUDAH LIFSCHITZ
FROMA LIPPMANN
FLORENCE GERSUK LIPSKY
JACOB C. LISH
PAUL MASON
JEFFREY MENICK
RICHARD MUELLER
NITA ORNOFF
DR. JERRY OSTERWEIL
CELIA PAVIS
BABETTE H. PITT
RABBI TZVI H. PORATH
BERNARD REICH
CARL ROBERTS
ISRAEL ROTKIN
WILLIAM B. SAUNDERS
DR. FRED SCHULMAN
MAURY SELDIN
BETTY K. SHAPIRO
DANIEL H. SHEAR
LEONORE SIEGELMAN
LOIS SLOTT
DR. MARTIN W. SPICKLER
SAUL I. STERN
GERD M. STRAUSS
LESTER TEPPER
ELSIE TROMBKA
MARCIA E. WEINBERG
MARY ANN WINTER
BEN WOSTEIN

Co-Chairmen
Jewish Youth Assembly
GIL PREUSS
HANNA SCHNEIDER

Past Presidents
DR. HARVEY H. AMMERMAN
ALBERT E. ARENT
PHYLLIS FRANK
AARON GOLDMAN
LOUIS C. GROSSBERG
JUDGE WILLIAM C. LEVY
RICHARD K. LYON
BERNARD S. WHITE
SEYMOUR D. WOLF

Executive Director
DR. MICHAEL BERENBAUM

Professional Staff
MARLENE GORIN
SELMA HOLZMAN
JONATHAN M. ROBERTSON
SAMUEL H. SISLEN

JEWISH COMMUNITY COUNCIL
1522 K STREET, N.W., WASHINGTON, D.C. 20005 • (202) 347-4628
OF GREATER WASHINGTON

September 24, 1981

Hon. Ronald V. Dellums
Hon. Charles McC. Mathias, Jr.
United States Congress
Washington, DC 20510

Dear Chairmen:

The Jewish Community Council of Greater Washington, the central representative body of 200 organizations and congregations in the Greater Washington area, urges full support from your respective Committees for the principle of Home Rule for the District of Columbia in reference to the current debate over DC Law 4-69.

For over a quarter of a century the Jewish Community Council has strongly advocated the right of the people of the District to determine their own future through the democratic process. We have stated publicly our support of the District Government's fullest decision making authority at the local level. We want to underscore that support once again.

DC Law 4-69 not only met, but exceeded, all of the requirements of the Home Rule Charter and the local legislative process. Extensive public hearings were held, wide media coverage was given and full Council debate preceeded the final, unanimous vote. To reject this legislation now would be an infringement on the rights of the citizens of the District and an attack on the fundamental principle of democratic government.

We urge your full support for the DC Law 4-69 and the concept of Home Rule.

Sincerely,

BERT SILVER
President

BS/fr

LEAGUE OF WOMEN VOTERS OF THE DISTRICT OF COLUMBIA
Room 718 Dupont Circle Building | 1346 Connecticut Avenue, N.W. | Washington, D.C. 20036
phone 785-2616

23 September 1981

The Honorable Charles McC. Mathias, Jr.
United States Senate
Washington, DC 20510

Dear Senator Mathias:

DC Act 4-69, the DC Sexual Assault Reform Act of 1981, a partial revision of the DC Criminal Code which was passed unanimously by the Council of the District of Columbia and signed by the Mayor, is nearing the close of its 30 legislative-day review period. The DC League of Women Voters appeals to you to let this legislation become law. It represents a considered decision of the elected officials of the District of Columbia, reached after ample opportunity for citizen comment.

Certainly by no stretch of the imagination could the act be deemed to affect the "federal interest". Moreover, it is responsive to a charge by the Law Revision Commission established by Congress in 1974 to modernize our criminal code. In December 1978 the Senate Subcommittee on Government Efficiency and the District of Columbia and the House Subcommittee on the Judiciary specifically urged the Council to expedite its up-dating of our archaic criminal code to conform with modern standards. This the Council has attempted to do, using the standards of many states as guidance.

The citizens of the District of Columbia who have worked so hard for the right to control their own local affairs deserve your help in protecting what limited Home Rule powers they have. We urge you to exercise the trust you hold by forestalling a Congressional veto of DC Act 4-69 and by speaking up at every opportunity for the right of the citizens of the District of Columbia to manage their own affairs.

Sincerely,

Sue Panzer, President

SP:hrg

15-821 O—83——14

GOVERNMENT OF THE DISTRICT OF COLUMBIA
METROPOLITAN POLICE DEPARTMENT
WASHINGTON, D. C., 20001

SEP 1 - 1981

The Honorable Charles McC. Mathias
Chairman of the Governmental Efficiency
and the District of Columbia Subcommittee
United States Senate
358 Russell Senate Office Building
Washington, D.C. 20510

Dear Senator Mathias:

In light of the article which appeared in this morning's edition of the Washington Post, Metro Section, I take this opportunity to personally communicate that I do not oppose the Council's Sexual Assault Bill, nor the action of the House of Representatives' District Committee.

With best wishes, I am,

Sincerely yours,

Maurice T. Turner, Jr.
Chief of Police

cc: All Members

SEP 25 1991

NATIONAL INSTITUTE FOR WOMEN OF COLOR

1712 N Street, N. W., Washington, D. C. 20036

202/466-2377

Board of Directors

Sharon Parker, Chair
Veronica C. Haro, Vice-Chair
Patria Robinson-Martin, Secretary
Anne Lee, Treasurer
Wilma Espinoza
Marguerite Gee
Suzan Shown Harjo
Kathryn Harris Tijerina
Cheryl Tina Yamamoto

Senator Charles McC. Mathias
358 Russell Senate Office Building
Washington, D.C. 20510

September 24, 1981

Dear Senator Mathias:

I am writing on behalf of the National Institute for Women of Color (NIWC) to support the District of Columbia Sexual Assault Reform Act of 1981. NIWC is an educational and advocacy organization established to promote the interests of women of color: i.e., Black, Hispanic, Asian American, American Indian and Alaska Native, and Pacific Islander. We believe that the Sexual Assault Reform Act provides comprehensive reform necessary to make the laws on sexual assault more inclusive and easier to enforce. Specifically, it broadens the traditional concept of rape and provides protection for the most vulnerable groups of victims (wards, patients, inmates); it assures equal protection and treatment under the law because it is sex neutral; and, in conformance with twenty-five other states, it repeals prohibitions on non-commercial, private sexual conduct between consenting adults.

This Act not only has broad support, but it also has been accorded a fair and extensive hearing by the D.C. City Council, which voted in its favor. Further, with the signature of the Mayor, this Act represents legislation desired and approved by the majority of residents of this city. To overlook the wishes and needs of the District's residents in favor of personal or political views not supported in this community is insensitive and undemocratic. Therefore, I urge you to support the will of the people of the District by voting for, and encouraging others to vote for, the D.C. Sexual Assault Reform Act of 1981.

Sincerely,

Sharon Parker

Sharon Parker
Chair, Board of Directors

District of Columbia Chapter,
National Lawyers Guild
2000 P Street, N.W.
Suite 612
Washington, D.C. 20036

September 29, 1981

Senate Subcommittee on Governmental
Efficiency and the District of
Columbia
6222 Dirksen Office Building
Washington, D.C.

Re: District of Columbia Sexual Assault Reform Act

Dear Committee Members:

I am writing on behalf of the District of Columbia Chapter of the National Lawyers Guild regarding the D.C. Sexual Assault Reform Act, D.C. Act 4-69. We support the reforms contained in that Act, as well as the right of the District of Columbia to develop and pass its own laws. We urge you to defeat the proposed Resolution of Disapproval, which, if passed, would have the effect of preventing reform of archaic criminal laws and would defeat the right of the citizens of the District of Columbia to self-determination. Our specific comments are as follows:

1. The Substance of the Act.

The D.C. Sexual Assault Reform Act expands the traditional concept of rape, by including various types of compulsion in effecting a sexual assault. This change makes the criminal law regarding involuntary sexual relations and contact more inclusive and easier to enforce.

The Act also affords protection against sexual abuse to groups of people who were previously unprotected. This comprehensive protection is provided through the use of gender neutral language and a focus on classes of persons who are in a position of vulnerability as a result of institutionalization or the status of being a ward. The law prohibits sexual abuse, whether forced or coerced, against adults of both sexes, minors in relationship to custodians, or persons in jails or hospitals. We support

the right of all persons to be protected from sexual assault.

In addition, the Act decriminalizes all non-commercial sexual conduct between consenting adults. The repeal of laws which prohibit fornication, sodomy, and adultery follows the lead of most of the other states and constitutes recognition of the violation of individual rights that is contained in such legal restrictions. We are in favor of the repeal of laws that probhibit consensual conduct between adults.

2. Home Rule.

The National Lawyers Guild opposes efforts of Congress to impose its will on the people of the District of Columbia in our determination of local law. Congressional interference with local affairs is unacceptable, and the present attempt to defeat the D.C. Sexual Assault Reform Act is another example of why many citizens of the District of Columbia are seeking statehood.

In its development of the D.C. Sexual Assault Reform Act, the D.C. Law Revision Commission conducted numerous public hearings and reviewed the Model Penal Code and the laws of other states. Even though we do not think that Congress should have the right to review our laws, it is the case that the House District Subcommittee and the Senate Subcommittee on Governmental Efficiency and the District of Columbia have already studied and commented on the initial version of the Sexual Assault Reform Act. The Act that was unanimously passed by the City Council and signed by our Mayor reflects years of work, with a broad range of input at every stage of its development.

The people of the District of Columbia have passed the Sexual Assault Reform Act, and we demand that Congress respect our legal process and our political right to self-determination. It is disturbing to find that the Senate Subcommittee's hearing on the Act cannot incorporate the oral testimony of residents of the District or representatives of local organizations on account of having asked Jerry Falwell of the Moral Majority to speak. Mr. Falwell has no connection

with the District of Columbia, will not be affected by the law, and has no standing to comment on either the substance of the Act or its relationship to the District's history with Home Rule.

We urge you to vote against the Resolution of Disapproval of the D.C. Sexual Assault Reform Act, so that the law that the District has passed will take effect.

Sincerely,

Alice L. Bodley

for the National Lawyers Guild,
District of Columbia Chapter

NWPC NATIONAL WOMEN'S POLITICAL CAUCUS
1411 K STREET, N.W. WASHINGTON, D.C. 20005

WEAL
Women's Equity Action League
805 15th Street, N.W., Suite 822
Washington, D.C. 20005
(202) 638-4560

September 24, 1981

Dear Senator:

The District of Columbia recently passed a bill (D.C. Act 4-69) to modernize its sexual assault law as part of an on-going comprehensive review of the D.C. criminal code. One key provision updates the District's rape laws.

Currently under D.C. law, those convicted of forcible rape face life imprisonment. With the law this stiff, convictions are next to impossible. Reducing the sentence as proposed in the D.C. Sexual Assault Reform Act, would encourage juries to convict rapists thus strengthening enforcement of the law. We fully support this change.

Other provisions of the reform bill remove sanctions against sexual conduct between consenting adults in private.

Organizations claiming "moral" superiority are asking Congress to intervene in the District's attempt to update its criminal code, spreading mis-information about the bill and charging that this bill threatens the moral fabric of the nations' capitol. In fact, 25 states already have laws similar to the provisions of the D.C. bill. Because under the Home Rule Charter Congress has a veto power over such legislation, you may be called on shortly to consider the D.C. Sexual Assault Reform Act. A Resolution of Disapproval has been introduced and a discharge petition is expected to bring the D.C. bill to the floor on or about September 30.

This is a local matter, not one for Congressional concern or intervention. The District should be allowed the independence and integrity to modernize its laws.

We at the National Women's Political Caucus and the Women's Equity Action League urge you to vote against discharge and to vote against the Resolution of Disapproval.

Sincerely,

Kathy Wilson
National Chair
National Women's Political Caucus

Carol Grossman
National President
Women's Equity Action League

September 30, 1981
Washington, D.C.

The Hon. Charles Mathias, chairman
United States Senate, Subcommitttee on Governmental Efficiency and the
Senate Office Building, District of Columbia,
Washington, D.C.

Dear Sir:

I am submitting a statement in support of the resolution of disapproval (S. Res. 207) of D.C. Act 4-69 with the humble request that it be made a part of the printed hearing record.

With a background in law and theology, and currently engaged in writing a book on the Ten Commandments, I took a special interest in this legislation, and testified at the various stages of consideration: before the joint hearings of the Law Revision Commission and Congress, before the local hearings at the ward level, and before the City Council.

I am gratified your subcommittee is holding hearings on this proposed legislation. It is a matter of major import not just for the city but also for the nation's capital and for the nation generally.

If I may be so bold, I believe an essay I wrote especially with reference to this legislation, entitled "The Wrongness of Consensual Nonmarital Sex", will give added valuable insights, so that I submit it herewith also for inclusion in the record.

My prayers are that we all see the true impact this legislation may have on the general health, safety, good morals and welfare of everyone.

Cordially yours,

Willel W.G. Reitzer

Willel W.G. Reitzer
17 Fifth St. N.E.
Washington, D.C.

Re D.C. Act 4-69
S.Res.201
H.Res.208

"SEXUAL REFORM OR SOCIOECONOMIC MORAL REGRESSION?"

Statement supporting resolutions of disapproval of D.C. Sexual Assault Reform Act to the Senate and House committees on District of Columbia matters (for the record)

by

Willel W.G. Reitzer, private citizen, Washington, D.C.

The D.C. government has voted in a "sex reform act". However, there are D.C. voters who are in favor of the U.S. Senate and U.S. House of Representatives reviewing this act--especially since the U.S. Congress is constitutionally entrusted with the responsibility, and also because this act, we believe, will impact adversely on the capital and nation.

1. First of all, it is questionable whether this law reflects home rule.
   a. It is maintained this measure had extensive hearings. This is to some extent true (I myself testified at them). But the fact is numerous community leaders were unaware either of the hearings or of some of the far-reaching changes proposed. This was due to a lack of publicity, which some of us suspect was deliberate because the act had certain unpopular key features that were lobbied for mostly by special interest groups. So these features were downplayed and other aspects stressed instead. But when several of these unpopular key features came to full public attention, a public outcry resulted, and the D.C. government backtracked:
      i) the provision eliminating incest as a crime was restored;
      ii) the provision lowering the age of consent for sex was removed.

   However, the furor over these items obscurred the fact that the act still had other unpopular features such as eliminating the offenses of sodomy, adultery, and fornication from the D.C. Code, as well as effectively removing the offense of SOLICITATION (noncommercial) to engage in these acts.
   b. Another reason this act may not reflect home rule is: several years ago the D.C. government made it impossible for D.C. voters to pass on the question of civil rights with regard to sexual orientation by denying them the process of voter initiative or referendum such as other cities permit. This was a victory for homosexual groups who had lobbied vigorously for it, and would not have been necessary if there were no question regarding D.C. voter preferences in general. Even the Washington Post had editorialized against such legal strategem (5-29-78).

      Whatwith the mayor, the city council, and Delegate Walter Fauntroy (who supported the national gay rights march--Post, 7-19-79) all having a pro-gay record, one may reasonably wonder if the general will of the people of D.C. was not disregarded by passing this act. Further support comes from a recent Mutual Life Insurance Co. survey showing 71% of the average Americans consider homosexuality immoral.

2. Even more important, the impact of this sex reform act is so harmful (to be documented subsequently) that from a number of considerations the home rule question is transcended, there being a substantial federal--that is, national---interest:
   a. A wrongful, harmful measure of a moral nature undermines the moral fiber of individuals as well as their health and general welfare, and in turn undermines both the morals, health, and welfare of the community and the entire nation. This is all the more serious when that community is the nation's capital because--
      i) it undermines the efficiency and image of the federal government--which is the largest industry here. As a 1950 Senate committee report stated: one homosexual "tends to have a corrosive influence upon his fellow employees", one reason being "frequent" attempts at enticement (81st Cong., Doc.241, p.4).
      ii) it reflects adversely upon the image of the entire nation (cf. "Is DC Becoming the Gay Capital of America?", Washingtonian, Sep. 1980).
      iii) it will have a corrupting influence on tourists and tourism--the second largest industry here (cf. "The Boy-Whore World: Male Prostitutes Work D.C. Street Corners," The Washington Post, 10-7-80). Tourists come here from every State solely because it is the capital, and should not find a more corrupting environment than in their home state.
      iv) it will set a bad precedent for other States to follow. The proponents of the sex reform bill even use the precedent argument for its passage on the ground a number of States have "modernized" their penal code in this way and D.C. should follow. But we reply this act is no reform, but actually socioeconomic moral regression which the nation's capital should not encourage but rather should discourage by refusing to go along with it.

THEREFORE, IF THE LOCAL GOVERNMENT DOES NOT HAVE THIS CONCERN AND CONVICTION, THEN IT IS WELL FOR THE U.S. SENATE AND U.S. HOUSE OF REPRESENTATIVES TO EXERCISE IT. HENCE EACH SENATOR AND CONGRESSMAN COMES TO LOOK INTO THE PRECISE NATURE AND EXTENT OF HARM THIS SEX REFORM ACT MAY CAUSE, AND RECORD HIS VOTE ON IT--IRRESPECTIVE OF HOME RULE CONSIDERATIONS.

Compendium of Arguments Against Legalizing Sodomy, Adultery, Fornication

The author, with an educational background in law and theology, has extensively researched and written on the subjects of homosexuality, prostitution, divorce. Following are sketches of four aspects of homosexuality, much of which also pertains to illicit--that is, nonmarital--heterosexual misbehavior.

I. THE AUTHORITIES CONDEMNING HOMOSEXUALITY

i) The Law of Nature. Homosexuality makes unnatural use of bodily organs. ii) Intuition. See Romans 2:15. iii) Divine Manifestations. See Romans 1:19,20,32. iv) Conscience. v) Sense of shame. vi) Holy Scriptures. See Lev. 18:22. vii) Jesus Christ, who stated the only sexual choices are monogamous male-female marital sex or celibacy (Mt.19:3-13). viii) Human reason, which, when operating aright--cf. 1 Cor. 2:14--affirms the reasonableness of the Biblical rationale. ix) Internal consequences. Those practicing homosexuality develop physiological and psychological aberrations: unnatural walk, talk, mannerisms, fixations, which are called "the recompense that was befitting their error"--Rom.1:27). They are visible proof of God's condemnation and punishment. x) The Church, which until recently uniformly condemned homosexuality. xi) Legislative history. Until recently homosexual acts were unlawful in every State as a threat to public health, welfare, safety, morals. xii) External judgments of God. The classical example is the fire rained on Sodom for the sins with which the name Sodom is still associated today (Jude 7). Specifically sexual sins defile the land, bringing upon it God's judgments (Lev.18:22-30): diseases, unrest, economic woes, apathy, natural disasters, pestilence, internal strife, warfare.

II. THE ADVERSE ASPECTS OF HOMOSEXUALITY

a) Psychological. Homosexuality has all the psychological characteristics of a vice. It is addictive: the longer practiced, the more compulsive it becomes, and the more bizarre and despicable forms it takes. Ongoing practice produces anxiety, guilt, fears, nervousness, remorse, instability--despite an outward air of a gay, carefree, glamourous life. Also widespread: insecurity, depression, pride, loneliness, malevolence, jealousy. In addition, it reflects a high rate of mental disorder consisting of irrationality, unreliability, impulsiveness, suicidal tendencies, spendthrift, transiency, deception, crime.

b) Social. Homosexuals form a distinct subculture with their own vernacular, dress, etc. which reflects an underlying antagonism to heterosexuality. They seek nondiscrimination and nonharassment, but they themselves are highly discriminatory, harassing, disruptive. Without disclosure and for sake of appearance, they marry and have offspring; but when the pretense becomes burdensome, they divorce, leaving family members shattered. They insist on "full" rights: to show affection in public, to marry, to adopt children, to get access to media, libraries, education courses as a legitimate alternate lifestyle.

c) Economical. The business world regards homosexuals as more accident prone, a greater financial and security risk, of higher job instability. Yet they demand access to every kind of employment, including close-contact positions: hospitals, recreation, police, prisons, military, youth activities, teaching positions--and sensitive positions (FBI, CIA).

d) Medical. Being unusually sexually active and promiscuous, VD is high among them. Their sexual aberrations regularly cause psychoneurotic symptoms--compulsions, fetishes, involuntary fixations--difficult to dislodge. They have greater alcohol and drug abuse.

III. REFUTING HOMOSEXUAL FALLACIES

Homosexuality is not a natural innate condition, for it has no valid rationale as has heterosexual sexuality (marital oneness and procreation). Although homosexual tendencies may be inherited, so are other tendencies to asocial, immoral behavior which one should learn to eliminate: aggressiveness, overeating, sloth, kleptomania, pyromania. There is ample evidence of the growing problem of homosexual recruitment of and demand for minors (e.g. "60 Minutes" on 5-15-77 disclosed male homosexuals accounted for a large per cent of the consumers of child pornography and patrons of male hustlers; a Time article stated "male prostitutes who are teen-age or younger are greatly in demand, particularly by older married men" (9-8-75).

IV. HOMOSEXUALITY AND THE LAW

Because marriage-and-family is regarded as the solid foundation of an enduring, prosperous society, the state has a compelling interest in safeguarding the marriage institution and marital stability from the threat of a) extramarital sex, and b) a decline in eligible males and females. As sex laws are loosened, divorce rates keep rising.

Then there is the problem of containing the spread of disease and sex-related crime, and of making places safe from solicitation and offensive conduct (especially in the capital).

All the arguments for legalization of consensual, adult, noncommercial, nonpublic sex miss the main point, which is that homosexual as well as nonmarital heterosexual sex activity is intrinsically evil. It is specifically named in the Bible as activity to be outlawed (1 Tim. 1:10). Thus, if legalized, it still undermines morality, health, safety, and general welfare--even if done in private. As one law review article noted: legalization "may reflect societal acceptance." Clearly the educative and deterrent impact of the law is removed--at least for some (usually the weak, the ignorant, the gullible, the young).

Consent to sex among adults is no valid exception because in certain personal cases basic values are involved that must be protected against any encroachment. Thus euthenasia, incest, bigamy, dueling, homicide are crimes regardless of consent. Besides, the D.C. age of consent is still far too low (i.e. 16). The liberal Model Penal Code suggested 18. The British Wolfenden Report suggested 21.

A 1980 survey disclosed 42% of women federal employees claimed sex harassment on the job, with 4 out of 5 being from males (Washington Star, 9-25-80). Making noncommercial solicitation for sex (whether heterosexual or homosexual) a crime and making homosexual and extramarital sex acts crimes afford protection to those who want it (it is not primarily a matter of policing the privacy of bedrooms).

self-determination for DC
a national coalition

2000 M Street, N.W.
Washington, D.C. 20036
202-833-1200

SUPPORTING ORGANIZATIONS

AFL-CIO
American Association of University Women
American Civil Liberties Union
American Federation of State, County, and Municipal Employees
American Federation of Teachers
American Jewish Committee
American Jewish Congress
American Veterans Committee
Americans for Democratic Action
Anti-Defamation League of B'nai B'rith
B'nai B'rith Women
Catholic Archdiocese of Washington
Common Cause
Communication Workers of America
Delta Sigma Theta
Democratic National Committee
Disciples of Christ (Christian Church)
District of Columbia Bar Association
District of Columbia Chamber of Commerce
District of Columbia Democratic State Committee
District of Columbia NOW
District of Columbia Republican Committee
The Episcopal Church
Friends Committee on National Legislation
Greater Washington Central Labor Council
Greater Washington Board of Trade
International Association of Machinists
International Union of Operating Engineers
Leadership Conference on Civil Rights
League of United Latin American Citizens
League of Women Voters
National Alliance of Postal and Federal Employees
National Association for the Advancement of Colored People
National Association of Counties
National Association of Cuban-American Women
National Capital Union Presbytery
National Coalition of American Nuns
National Conference of Christians and Jews
National Council of Churches
National Council of La Raza
National Education Association
National Jewish Community Relations Advisory Council
National Urban League
National Women's Political Caucus
The Newspaper Guild
The Ripon Society
United Auto Workers
United Church of Christ
United Methodist Church, Board of Church and Society
United Presbyterian Church
United States Jaycees
United States Student Association
United Steelworkers of America

September 1981

Dear Senator:

Self-Determination for D.C., the national coalition which lead the efforts for passage of the 1973 District of Columbia Home Rule Act, and the campaign for District representation in Congress is concerned about the recent attacks on D.C. self-government occuring in the House.

We strongly oppose the efforts to have Congress override the recent revisions of the D.C. Criminal Code which was passed by the District Council. We believe the move to override is inconsistant with the principles of self-government and a gross violation of the intent of Congress when it adopted the Home Rule Act.

D.C. Home Rule, which we and our many friends in Congress fought so dearly for, established the principle that democratic self-government and congressional oversight on matters with a clear federal interest can co-exist in our nation's capital. A congressional veto of the criminal code reforms will mark a return to the "bad ol' days" when Congress made all decisions for the District, with no accountability to the local electorate - everything from the fee for a dog license to how many blocks a cop has on his beat.

A no vote on the attempt to override the decisions of the locally elected District Council on D.C. Act 4-69 (D.C. Sexual Assault Reform Act of 1981) will help preserve self-government for the 650,000 American citizens in the District.

Sincerely,

Richard W. Clark

Richard W. Clark
National Chairman

30 September 1981

From: Rev. Cleveland B. Sparrow, Sr.
President, Sparroworld Baptist Corporation
Chairman, D. C. State Moral Majority

To: Senate Government Affairs Committee and News Release

Subj: Senate Disapproval Resolution 207 to Veto
D. C. Act 4-69 (War on Sin)

1. A War on Sin (Crime) has been declared in Washington, D. C. to protect the victims of Sin (Crime). The victims of Sin (Crime) are young and old, male and female, black and white. Organized crime must be stopped in Washington, D. C., our nation's capital. Concerned Americans of Washington and registered voters across the United States demand that the Senate stop the current effort to liberalize sin and crime in Washington under the cover of D. C. Sexual Assault Reform Act of 1981.

2. D. C. Act 4-69 does much more than merely reform the sexual codes of the District. In fact, D. C. Act 4-69 explicitly repeals current statutes against deviant sexual practices, removes present protection for 16-year old students from seduction by teachers, and reduces the penalty for rape. D. C. Act 4-69 specifically and explicitly repeals present criminal statutes against:

   a. seduction;
   b. sodomy;
   c. bestiality;
   d. adultery;
   e. fornication; and
   f. homosexuality

3. The elimination of the present statute against seduction of students is stressful in light of what Time magazine calls "a disturbing idea (that is) gaining currency within the sex establishment: very young children should be allowed, and perhaps encouraged, to conduct a full sex life without interference from parents and the law." The outrages of D. C. Act 4-69 are no accident. The framers' mentality is illustrated by their attempts to repeal the old incest law and the child sex laws. (If D. C. become the gay capitol of the world) On the other hand, Washington, D. C. is already the christian captial of America and the World. The victims of Sin (Crime) including the homosexuals would receive many benefits if they would try to adhere to the existing high moral principles upon which this nation was founded rather than working in vain to repeal them. However, the greatest beneficiaries of the War on Sin (Crime) would be babies. Last year 25,000 babies were aborted in Washington, D. C., 1.5 million in America and 5 million in Russia. These victims must be saved. Each one saved will be a victory.

4. The War on Sin (Crime) should start in Washington because of the Compelling Federal Interest.

   a. Washington is the nation's capital, and it belongs to all Americans (saints or sinners) as does no other city.
   b. Washington is the nation's showplace, and what happens here sends a signal to the world of the standards we advocate as a nation.
   c. Washington contains the largest concentration of federal employees. The government has an interest in the criminal statutes controlling their behavior.
   d. Washington's decriminalization of deviant behavior will have a spillover effect on Virginia, Maryland and other states.
   e. Washington is visited by millions of American and foreign tourists, whose safety would be affected by a change in the city's criminal statutes.

5. The Constitution Charges Congress with Legislative Authority Over the District

The Constitution recognizes and requires extraordinary Congressional responsibility for the District when it grants to Congress the "power... to exercise exclusive legislation in all cases whatsoever, over such District... as may ... become the seat of the Government of the United States..." (Article 1, Section 8).

When Congress granted limited self-government to Washington, it specifically reserved to itself ultimate legislative jurisdiction over the capital. The D. C. Self-Government and Governmental Reorganization Act of 1973 contains a "reservation of Congressional Authority" provisions. Section 601 states:

> Nothwithstanding any other provision of this Act, the Congress of the United States reserves the right, at any time, to exercise its constitutional authority as legislature for the District, by enacting legislation for the District on any subject, whether within or without the scope of legislative power granted to the Council of this Act, including legislation to amend or repeal any law in force in the District prior to or after enactment of this Act and any act passed by the Council.

6. All extra-marital sex is wrong according to conscience, a sense of shame, the Bible, 2,000 years of Church Law as well as traditional American legal history. It is also proved to be wrong by its adverse effects on human personality, health, efficiency and productivity.

7. The Senate must learn that the D. C. City Council did not hold proper hearings to obtain the views of the majority of the people of Washington on this matter. The House District Committee completely failed/refused to allow the representatives of the majority of the people of Washington to speak at a hearing held on D. C. Act 4-69 on 24 September 1981. This is a gross violation of the very basic principles of democracy/home rule. To the extent that the basic principals of home rule has been violated, the matter before the Senate is not a home rule issue.... but a national "home ruin issue" and a nationwide disaster. This is why we need a "War on Sin." The Sparrowgrld Baptist Temple will host the National "War on Sin" to turn this nation back to Jesus Christ.

8. The Senate must allow the combined voices of the majority of D. C. Voters, as well as the majority of the American people to be heard and honor the basic principles of democracy by passing S. R. 207, Resolution of Disapproval of D. C. Act 4-69. The leaders of Sodom and Rome had to make a choice, they made the wrong choice. I urge the Senate not to look back and veto D. C. Act 4-69.

For A better America,

Rev. Cleveland B. Sparrow, Sr.
D.C. State Moral Majority

REPLY TO NEW YORK ADDRESS

September 22, 1981

The Honorable Charles McC. Mathias, Jr.
Chair, Subcommittee on Governmental Efficiency
and the District of Columbia
United States Senate
Washington, D.C. 20510

Dear Senator Mathias:

It has been brought to my attention that Congress is considering overturning a District of Columbia act which decriminalizes private sexual acts between consenting adults.

For your information, the Eleventh General Synod of the United Church of Christ, meeting in Washington, D.C., July 1-5, 1977, adopted the following recommendation in regard to human sexuality pertaining to the matter of decriminalization:

> "The Eleventh General Synod urges congregations, Associations, Conferences, and Instrumentalities [of the United Church of Christ] to work for the decriminalization of private sexual acts between consenting adults."

The biennial General Synod of the United Church of Christ is the largest, most representative policy-making body of our 1,736,000 member denomination and is composed of duly elected delegates from all parts of the United States.

I trust this information will be helpful to you in assuring the right of privacy of citizens of the District of Columbia as regards sexual acts between consenting adults.

Yours in Christ,

Yvonne V. Delk

Yvonne V. Delk
Executive Director

YVD/bj

cc: All members

UNITED CHURCH OF CHRIST
OFFICE FOR CHURCH IN SOCIETY
105 MADISON AVENUE • NEW YORK, N.Y. 10016 (212) 683-5656 110 MARYLAND AVENUE N.E. • WASHINGTON, D.C. 20002 (202) 543-1517

YVONNE V. DELK
Executive Director

JOHN W. ROGERS
Chairperson